# Supreme Court of the United States

**OCTOBER TERM, 1964**

# No. 116

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THOMAS J. CRIDER, PETITIONER

*vs.*

ZURICH INSURANCE COMPANY

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX


| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Alabama | | |
| Docket entries | B | 1 |
| Complaint | 1 | 3 |
| Motion to dismiss and for summary judgment | 4 | 6 |
| Exhibit A—Amended complaint filed in the Circuit Court of DeKalb County, Alabama, in the case of *Thomas J. Crider* v. *A. H. Lawler Construction Company, Inc.*, No. 590 | 8 | 11 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Alabama—Continued | | |
| Motion to dismiss and for summary judgment —Continued | | |
| Exhibit B—Judgment of Circuit Court of DeKalb County, Alabama, awarding compensation in the case of *Thomas J. Crider* v. *A. H. Lawler Construction Company, Inc.*, No. 590 | 10 | 13 |
| Summons and complaint filed in the Circuit Court of DeKalb County, Alabama, in the case of *Thomas J. Crider* v. *A. H. Lawler Construction Company, Inc.*, No. 590 | 13 | 14 |
| Motion for summary judgment or judgment on the pleadings | 24 | 22 |
| Opinion and order granting motion to dismiss | 26 | 23 |
| Notice of appeal to the United States Court of Appeals for the Fifth Circuit | 35 | 26 |
| Appellant's statement of point | 37 | 27 |
| Proceedings in the United States Court of Appeals for the Fifth Circuit | 40 | 27 |
| Minute entry of argument and submission | 40 | 27 |
| Per curiam opinion | 41 | 28 |
| Judgment | 42 | 29 |
| Clerk's certificate (omitted in printing) | 44 | 30 |
| Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari | 45 | 30 |

[fol. A]

[Clerk's certificate to following transcript (omitted in printing)].

[fol. B]

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA**

DOCKET ENTRIES

SOUTHERN DIVISION

Docket CA 63-119

Title of Case

THOMAS J. CRIDER

*vs.*

ZURICH INSURANCE COMPANY, a corporation

BASIS OF ACTION: Suit to enforce collection of judgment in the sum of $10,500.00 and $100.00 costs, recovered by plaintiff against his employer, Lawler Construction Co., in the Circuit Court for the Ninth Judicial Circuit of Alabama—claims defendant insured Lawler Construction Co. against liability for injuries to its employees, etc.

JURY TRIAL CLAIMED: By Plaintiff.

ON March 14, 1962.

Attorneys

*For Plaintiff:*

J. Terry Huffstutler; Max C. Pope, Levine, Fulford & Gwaltney

*For Defendant:*

Foster Etheridge, Spain, Gillong & Young

| Date 1963 | Plaintiff's Account | Received | Disbursed |
|---|---|---|---|
| Mar. 14 | Ck - J. Terry Huffstutler | 15.00 | |
| Mar. 18 | Cr 102411 | | 15.00 |

[fol. C]

| Date 1963 | Filings-Proceedings |
|---|---|
| Mar. 14 | Complaint filed—Page 1. |
| " 14 | Summons and complaint issued—del. to Marshal for service |
| " 27 | Summons and complaint returned, executed Mar. 26, 1963 and filed |
| Apr. 10 | Motion of defendant to dismiss and for summary judgment filed—copy served by counsel—Page 4. |
| " 15 | Motion of plaintiff for summary judgment or for judgment on the pleadings filed—copy served by counsel—Page 24. |
| May 17 | Opinion and order of the Hon. H. H. Grooms granting the defendant's motion to dismiss, and dismissing this action at the costs of the plaintiff filed and entered—copies mailed attorneys—Page 26. |
| June 5 | Petition of plaintiff for appeal in forma pauperis filed—copy served by counsel with affidavits of plaintiff in support thereof attached—Page 29. |
| " 5 | Order allowing plaintiff to prosecute his appeal in forma pauperis etc. filed and entered (Allgood)—copies mailed attorneys—Page 34. |
| " 5 | Notice of appeal by plaintiff filed—cert. copy mailed defendant's attorneys—Page 35. |
| " 5 | Appellant's statement of Points filed—copy served by counsel—Page 37. |
| " 5 | Appellant's designation of record on appeal filed—copy served by counsel—Page 38. |

[fol. 1]

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

Civil Action No. CA 63-119

THOMAS J. CRIDER, PLAINTIFF

*vs.*

ZURICH INSURANCE COMPANY, a corporation, DEFENDANT

COMPLAINT—Filed March 14, 1963

[File Endorsement Omitted]

## FIRST CAUSE OF ACTION

1. (a) The plaintiff, Thomas J. Crider, is a resident of DeKalb County in the State of Alabama within the jurisdiction of this court, and is over twenty-one (21) years of age.

(b) The defendant, Zurich Insurance Company, is a corporation organized and existing under the laws of the State of Illinois and its principal place of business is Chicago, Illinois.

(c) The amount in controversy in this action, other than interest and costs, exceeds the sum of Ten Thousand Dollars ($10,000.00).

2. Heretofore, on, to-wit, the 11th day of February, 1959, plaintiff, Thomas J. Crider, recovered a final judgment in the amount of Ten Thousand Five Hundred Dollars ($10,500.00) and costs in the amount of One Hundred Dollars ($100.00) against his employer, Lawler Construction Company, Inc., a Georgia corporation, doing business in Alabama, in the Circuit Court for the Ninth Judicial Circuit of Alabama. Said judgment was for loss and damage suffered by plaintiff, Thomas J. Crider, while he was employed by Lawler Construction Company, and performing services within the line and scope of his employment.

3. At the time of the accident, which resulted in the [fol. 2] loss and damage to plaintiff, Lawler Construction Company, Inc., was insured by the defendant against liability for injury to said plaintiff, or any other employee or employees injured while performing duties for his employer within the line and scope of his employment.

4. More than thirty (30) days have passed since said judgment was rendered, and said judgment has not been satisfied.

WHEREFORE, the plaintiff, Thomas J. Crider, prays that this Court enter a final Order and Decree in this cause, ordering the defendant, Zurich Insurance Company, a corporation, to satisfy the judgment referred to above, together with costs and interest accrued at the rate of six per cent (6%) per annum from February 11, 1959, or in the alternative to enter here a judgment in favor of plaintiff, Thomas J. Crider, against said corporate defendant in the amount of Ten Thousand Five Hundred Dollars ($10,500.00), together with costs and interest accrued at the rate of six per cent (6%) per annum from February 11, 1959, in satisfaction of the judgment of said plaintiff against the said Lawler Construction Company, Inc., or for such other appropriate relief as the Court may decree.

## SECOND CAUSE OF ACTION

1. Plaintiff refers to and adopts here the averments in paragraph 1, (a), (b), and (c) in the First Cause of Action.

2. Heretofore, on, to-wit, the 11th day of July, 1956, plaintiff, Thomas J. Crider, was injured while performing duties for his employer, Lawler Construction Company, Inc., a Georgia corporation, doing business in Alabama, within the line and scope of his employment in DeKalb County, Alabama.

3. At the time of said injury, the said Lawler Construction Company was insured against liability for the injury of plaintiff or any other employee or employees injured while performing duties for said employer, Lawler

Construction Company, within the line and scope of his [fol. 3] employment, and said liability was insured by a contract of insurance issued by the defendant. The plaintiff was a third party beneficiary under said contract of insurance.

4. The plaintiff here adopts paragraph 2 of the First Clause of Action.

5. The defendant has breached its said contract by failing and refusing to pay or satisfy the said judgment against Lawler Construction Company, all to plaintiff's damage.

WHEREFORE, the plaintiff, Thomas J. Crider, claims judgment of the defendant in the amount of Ten Thousand Five Hundred Dollars ($10,500.00), together with costs and interest accrued at the rate of six per cent (6%) per annum from February 11, 1959, in this cause.

J. TERRY HUFFSTUTLER
First National Bank Building
Birmingham 3, Alabama

and

LEVINE, FULFORD & GWALTNEY
508-14 Frank Nelson Building
Birmingham 3, Alabama

By: /s/ Max Pope
ATTORNEYS FOR PLAINTIFF

The Plaintiff demands a trial by jury.

J. TERRY HUFFSTUTLER

and

LEVINE, FULFORD & GWALTNEY

By: /s/ Max Pope

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION

CIVIL ACTION

No. C.A. 63-119

[Title Omitted]

[File Endorsement Omitted]

MOTION TO DISMISS AND FOR SUMMARY JUDGMENT—
Filed April 10, 1963

Comes now the defendant, Zurich Insurance Company, a corporation, and moves the Court to dismiss this action and for grounds therefor assigns the following:

1. For that this Court lacks jurisdiction over the subject matter of this suit, and in support of said ground says as follows:

Defendant avers that the Judgment described in plaintiff's complaint wes rendered by the Circuit Cour of DeKalb County, Alabama, in Case No. 590. A true and correct copy of the portion of the record in said case, namely, the Company as Last Amended, and the Judgment of Court Awarding Compensation, is attached hereto, marked Exhibit "A" and Exhibit "B", respectively, and made a part hereof as if fully set out herein at this point. Defendant further says that at all times mentioned in said Complaint and on the date of the said Judgment, it was the applicable law of the State of Georgia as contained in the Workman's Compensation Law of that State, Title 114, Chapter 114-706, Georgia Code, Acts of the Georgia Legislature of 1920, page 197; 1937, pages 7 and 43; 1945, page 462; 1956, pages 725 and 726, that:

"If the employer and the injured employee or his dependents fail to reach an agreement in regard to

compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then [fol. 5] the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature, 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

"The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one year limit shall not apply."

Further, it is the law of the State of Georgia, Title 114, Chapter 114-706, Georgia Code, that:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State, and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that the Circuit Court of DeKalb County, Alabama, wherein the Judgment described in plaintiff's complaint was obtained, was without jurisdiction of the subject matter of the complaint as last amended for that the sole method of claiming compensation under the Georgia Workmen's Compensation Act is by the filing of a claim with the Georgia State Board of Workmen's Compensation within one year from the date of the accident [fol. 6] and that only the State Board of Workmen's Compensation of the State of Georgia had jurisdiction to award the plaintiff workmen's compensation under the Workmen's Compensation Law of the State of Georgia, and the defendant avers that the plaintiff did not file a

claim with the Georgia State Board of Workmen's Compensation within one year after the accident described in the Complaint as Last Amended hence, the Judgment of the Circuit Court of DeKalb County, Alabama mentioned in plaintiff's complaint and made the basis of this suit is null and void in that the Circuit Court of DeKalb County, Alabama did not have jurisdiction of the subject matter of the suit in which the judgment described in the complaint was rendered. Further, defendant says that this Court is without jurisdiction of the subject matter of this suit.

2. For that the complaint fails to state a claim upon which relief can be granted, and in support of said ground says as follows:

Defendant adopts all of the averments of ground one of said motion except the first paragraph thereof and adds the following:

Defendant says that the Workmen's Compensation Law of the State of Georgia which was made the basis for the recovery in the Judgment mentioned in the plaintiff's complaint provides for the enforcement of its provisions to an Administrative Board, the Georgia State Board of Workmen's Compensation and that the only remedy afforded by the said Compensation Act is by an original proceedings before the Georgia State Board of Workmen's Compensation; that the jurisdiction of the Georgia State Board of Workmen's Compensation of claims arising under the Georgia Compensation Law is exclusive and that neither the United States Court nor the Circuit Court of DeKalb County, Alabama nor any other tribunal than the Georgia State Board of Workmen's Compensation had jurisdiction of it. Plaintiff's sole and exclusive remedy was before the Georgia State Board of Workmen's Compensation and that the Circuit Court of DeKalb County, Alabama lacked jurisdiction of the subject matter of the suit wherein plaintiff's Judgment was entered and the Judgment is null and void. Defendant says that said Judgment mentioned in plaintiff's complaint is null and void and, therefore, there is no claim upon which relief can be granted.

[fol. 7] The Defendant asks that the Court consider its Motion to Dismiss as a Motion for Summary Judgment and moves for a summary judgment in favor of the Defendant.

/s/ Foster Etheredge
FOSTER ETHEREDGE
Attorney for Defendant

Of Counsel:

Spain, Gillon & Young
First National Building
Birmingham 3, Alabama

CERTIFICATE OF SERVICE
[Omitted in Printing]

[fol. 8] EXHIBIT A TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

IN THE CIRCUIT COURT OF
DE KALB COUNTY, ALABAMA

No. 590

THOMAS J. CRIDER, PLAINTIFF

*vs.*

A.H. LAWLER CONSTRUCTION COMPANY, INC.,
a Corporation, DEFENDANT

AMENDED COMPLAINT

Now comes the plaintiff and, with leave of the Court first had and obtained, amends his complaint heretofore filed in this cause as follows:

1. By adding the following count:

*COUNT A:* Plaintiff claims of the defendant benefits under the workmen's compensation laws of Georgia due and owing under the following statement of facts:

On July 11, 1956, the relation of employer and employee or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a Georgia corporation, doing business in Alabama; and plaintiff and defendant were subject to the workmen's compensation laws of Georgia; and, while so employed and engaged in the business of defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally and permanently disabled. A controversy has arisen as to the benefits to be paid under the workmen's compensation laws of Georgia. Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defend-

ant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Filed February 10, 1959, Herbert G. Tate, Clerk

[fol. 9] Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice of said accident but that said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the workmen's compensation laws of Georgia.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than $40.00 a week. Plaintiff further avers that he is totally and permanently disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

WHEREFORE, plaintiff claims of the defendant such benefits as he is entitled to receive under the workmen's compensation laws of Georgia.

2. By striking Counts 1, 2 and 3 of the complaint heretofore filed in this cause.

3. By waiving the demand for a jury trial.

/s/ J. Terry Huffstutler
J. TERRY HUFFSTUTLER
Attorney for Plaintiff

[fol. 10] EXHIBIT B TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

IN THE CIRCUIT COURT OF
DE KALB COUNTY, ALABAMA

No. 590

THOMAS J. CRIDER, PLAINTIFF

*vs.*

A. H. LAWLER CONSTRUCTION COMPANY, INC.,
a Corporation, DEFENDANT

JUDGMENT OF COURT AWARDING COMPENSATION

This day came the plaintiff, Thomas J. Crider with his attorney, J. Terry Huffstutled; and the defendant, A. H. Lawler Construction Company, Inc., a corporation, failing to appear; (the Court having granted the request of the withdrawal as attorney for the defendant made by Hon. W. M. Beck and the Court further being satisfied that defendant was notified of the withdrawal of representation by Hon. W. M. Beck); and after hearing the evidence on the amended complaint of plaintiff, the Court is of the opinion that the plaintiff is totally and permanently disabled as a result of the injuries sustained while acting within the line and scope of his employment for the defendant, and it is the judgment of the Court, that compensation be and the same is hereby awarded to the plaintiff in the sum of Ten Thousand Dollars ($10,000.00) and the further sum of Five Hundred Dollars ($500.00) for medical expenses.

It is, therefore, considered, ordered and adjudged by the Court that the plaintiff have and recover from the defendant the said sum of Ten Thousand Five Hundred Dollars ($10,500.00) in one lump sum, together with costs in this behalf expended, for all of which execution may issue.

It is further considered and ordered by the Court, and it is the judgment of the Court, that the attorney's fee of J. Terry Huffstutler, for the plaintiff, be and the same is hereby fixed at Three Thousand Five Hundred Dollars ($3,500.00).

The foregoing order and judgment entered this 11 day of February, 1959.

/s/ [Illegible]
Circuit Judge

Filed February 11, 1959, Herbert G. Tate, Clerk

[fols. 11-12] * * *

[fol. 13] SUMMONS AND COMPLAINT

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT OF ALABAMA

STATE OF ALABAMA )
)
DEKALB COUNTY )

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon A. H. LAWLER CONSTRUCTION COMPANY, INC., a corporation, to appear before the Circuit Court to be held for said County, at the place of holding the same, Fort Payne, within thirty days from service of this process, then and there to answer the complaint of THOMAS J. CRIDER.

Witness my hand and seal this 3 day of July, 1957.

/s/ Willard Cole
Clerk of the Circuit Court of
DeKalb County, Alabama.

# COMPLAINT

## IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

No. 590

THOMAS J. CRIDER, PLAINTIFF

*vs.*

A. H. LAWLER CONSTRUCTION COMPANY, INC., a Corporation, DEFENDANT

*COUNT 1:*

Plaintiff claims of the defendant benefits under the Workmen's Compensation Laws of Alabama due and owing under the following statement of facts: On July 11, 1956, the relation of employer and employee, or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a foreign corporation, doing business in Alabama, and plaintiff; and defendant and plaintiff were subject to the Workmen's Compensation Laws of Alabama; and, while so employed and engaged in the business of the defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally disabled. A controversy has arisen as to the benefits to be paid under the Workmen's Compensation Laws of Alabama.

Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

[fol. 14] At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defendant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proxi-

mate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice of said accident but that the said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the Workmen's Compensation Laws of Alabama.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than Forty Dollars ($40.00) a week. Plaintiff further avers that he is totally disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

WHEREFORE, plaintiff claims of the defendant such benefits as he is entitled to receive under the Workmen's Compensation Laws of Alabama. He prays that notice may be given the defendant and that hearing may be had, all in accordance with the laws and rules of this Honorable Court.

*COUNT 2:*

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that heretofore, on, to-wit, July 11, 1956, the defendant was engaged in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and the plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his

employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack B. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant, and then and there the said Mack B. Walker, while acting within the line and scope of his employment as a servant, agent or employee of the defendant, allowed or caused the A-frame and blade of the said bulldozer to fall upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and atten- [fol. 15] tion in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused as a proximate consequence of the negligence of Mack B. Walker, the servant, agent or employee of the defendant, while acting within the line and scope of his employment, in allowing or causing the said A-frame and blade of the said bulldozer to fall upon plaintiff at the time and place and on the occasion aforesaid.

*COUNT 3:*

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that, heretofore, on, to-wit, July 11, 1956, the defendant was working in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and that

plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack B. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant. And plaintiff avers that, while he was thus employed and was underneath the said bulldozer assisting to make said repairs, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and attention in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused by reason of the defects in the condition of the said bulldozer and that the defendant knew of the defects existing in said bulldozer prior to the date plaintiff was injured.

/s/ J. Terry Huffstutler
J. TERRY HUFFSTUTLER,
Attorney for Plaintiff.

PLAINTIFF DEMANDS A JURY TRIAL.

/s/ J. Terry Huffstutler
J. TERRY HUFFSTUTLER
Attorney for Plaintiff.

[fol. 16]

*[Duly sworn to by Thomas J. Crider, jurat omitted in printing; (all in italics)]*

[fol. 16A]

THOMAS J. CRIDER *vs.* A. F. LAWLER CONST. CO., INC.

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver *only* to addressee (no additional).

☐ Show address where delivered in item 4 below (35¢ additional)

RECEIPT

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Signature or name of addressee
   A. H. Lawler Const. Co., Inc.
2. Signature of addressee's agent *(agent should enter addressee's name in item 1 above)*
   Irene Lawler Eden
3. Delivery date

[fol. 17]

IN THE CIRCUIT COURT OF DEKALB COUNTY, ALABAMA

Case No. 590

THOMAS J. CRIDER, PLAINTIFF

*vs.*

A. H. LAWLER CONSTRUCTION COMPANY, INC., a Corporation, DEFENDANT

STATE OF ALABAMA
MONTGOMERY COUNTY

Before me, Jamie L. Pettigrew, a Notary Public in and for said State-at-Large, personally appeared Mary Texas

Hurt, Secretary of State of the State of Alabama, who is known to me and who, being duly sworn, deposes and says that in her official capacity as Secretary of State of the State of Alabama she, on the 19 day of July 1957 sent by registered mail in an envelope addressed as follows:

"Registered Mail—
Return Receipt Requested"

"A. H. Lawler Construction Company, Inc.
Perry, Georgia"

bearing sufficient and proper prepaid postage, a notice bearing her signature and the Great Seal of the State of Alabama in words and figures as follows:

"A. H. Lawler Construction Company, Inc.
Perry, Georgia

You will take notice that on July 19, 1957 the Sheriff of Montgomery County, Alabama, served upon me, in my official capacity, Summons and Complaint and Affidavit in a case entitled: THOMAS J. CRIDER, Plaintiff VS A. H. LAWLER CONSTRUCTION COMPANY, INC., a Corporation, Defendant in the CIRCUIT COURT OF DEKALB COUNTY, ALABAMA, Case No. 590

a true copy of which Summons and Complaint and Affidavit are attached hereto and the said service upon me as Secretary of State of the State of Alabama has the force and effect of personal service upon you, said service being under provisions of Title 7, Section 199(1) of the 1940 Code of Alabama and Supplement thereto.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 19 day of July 1957

/s/ Mary Texas Hurt
MARY TEXAS HURT
Secretary of State"

Enclosures (2)

Affiant further says that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the Summons and Complaint and Affidavit in the above-styled cause.

Affiant further says that on July 23, 1957 she received the "Return Card" showing RECEIPT by the designated addressee of the aforementioned matter at Perry, Ga. on 7/22/57

/s/ Mary Texas Hurt Garner
Affiant—MARY TEXAS HURT
Secretary of State

Sworn to and subscribed before me, this the 23 day of July 1957

/s/ Jamie L. Pettigrew

Notary Public—State-at-Large
My Commission expires: January 1959

Enclosures—"Return Receipt" and
Copy of Process

cc: Honorable J. Terry Huffstutler
Attorney at Law
1215 1st National Building
Birmingham, Alabama

[fol. 18] IN THE CIRCUIT COURT OF
DEKALB COUNTY, ALABAMA

THOMAS J. CRIDER, Box ...., Valley Head, Alabama,
PLAINTIFF

*vs.*

A. H. LAWLER CONSTRUCTION CO., INC., a Corporation
Perry, Georgia, DEFENDANT

Serve on:

Secretary of State
State of Alabama
Montgomery, Alabama

*Summons and Complaint*

[fols. 19-23] * * *

[fol. 24]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. C.A. 63-119

[Title Omitted]

[File Endorsement Omitted]

MOTION FOR SUMMARY JUDGMENT OR JUDGMENT ON THE PLEADINGS—Filed April 15, 1963

Plaintiff moves the court to enter its judgment on the pleadings in favor of the Plaintiff and against the Defendant under and pursuant to the provisions of Rule 12(c), Federal Rules of Civil Procedure, or in the alternative to grant summary judgment for Plaintiff and against Defendant pursuant to Rule 56, and as grounds for said motions, separately and severally, assigns the following:

1. The Circuit Court of DeKalb County, Alabama, in Case No. 590, rendered a final judgment against the Defendant. Said judgment was attached to Defendant's motion to dismiss and marked Exhibit "B". Said judgment was rendered with personal judisdiction of the Defendant as shown on the face of said judgment.

2. Further the Circuit Court of DeKalb County, Alabama, in Case No. 590, rendered the aforesaid final judgment with full jurisdiction over the subject matter. Which said final judgment was based on the Workman's Compensation Law of Georgia as alleged in the amended complaint of Plaintiff which was attached to Defendant's motion to dismiss and marked as Exhibit "A". Said Workman's Compensation Law of Georgia created a cause of action that could be enforced in any State of the Union that could obtain personal jurisdiction over the parties involved.

3. Further the Circuit Court of DeKalb County, Alabama, had the duty to enforce said transitory cause of action under the "Full faith and credit" clause of the [fol. 25] *United States Constitution*, Article IV, Section 1, and 28 U.S.C.A. Sec. 1738.

4. Further the Circuit Court of DeKalb County, Alabama, had the duty under Title 7, Sec. 97 *Code of Alabama* (1940) (Recomp. 1958), to enforce this foreign created transitory cause of action.

5. Further the Circuit Courts of Alabama are courts of general jurisdiction and not of limited jurisdiction.

LEVINE, FULFORD & GWALTNEY

By /s/ Max Pope

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 26]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION

Civil Action No. 63-119

[File Endorsement Omitted]

THOMAS J, CRIDER, PLAINTIFF

vs.

ZURICH INSURANCE COMPANY, a corporation, DEFENDANT

OPINION AND ORDER GRANTING MOTION TO DISMISS—
May 16, 1963

This matter came on for hearing at this time upon the plaintiff's motion for summary judgment and upon the defendant's motion to dismiss.

From the proceedings herein, the following facts appear to be undisputed:

Plaintiff, Thomas J. Crider, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Both Crider and Lawler were under and subject to the Workman's Compensation Act of Georgia at the time the former was injured. Crider instituted a suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeing recovery under three counts, the first count being under the Alabama Compensation law and Counts Two and Three being under the common law.

On February 11, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial, and added Count A under the Georgia Compensation law. On the following day judgment by default was entered against Lawler for the sum of $10,500, together with costs.

The defendant herein, Zurich Insurance Company, a corporation, was the Workman's Compensation insurer of Lawler. It claims that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter, and that this action cannot be maintained against Zurich who is in privity with Lawler, and that the judgment is void.

[fol. 27] The Court has heard oral argument, has considered the briefs and reviewed the authorities, and is of the opinion that the defendant's contention is well taken.

In *Green* v. *J. A. Jones Const. Co.*, 161 F. 2d 359, the Court of Appeals for the Fifth Circuit, held that the Circuit Court of Hinds County, Mississippi, and the United States District Court for the Southern District of Mississippi did not have jurisdiction to award damages under the Georgia Workmen's Compensation Act in an original proceeding filed in the former court and removed to the United States District Court. The Court ruled that the Georgia decisions

> "settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can

be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)."

A different situation would be presented if the Georgia Compensation Act vested in the Georgia courts the power to entertain an original suit for workmen's compensation. To permit this original action in the courts of Alabama is to allow an original proceeding in such courts where the same is denied to the courts of Georgia.

Since the DeKalb County Circuit Court did not have jurisdiction of the subject matter, the issue of jurisdiction is open to inquiry and where as here, the record discloses a lack of jurisdiction, the judgment is void. *City of Birmingham* v. *Reed*, 35 Ala. App. 31, 44 So. 2d 240; *Murphy* v. *L. & N.*, 258 Ala. 138, 61 So. 2d 3; *Crump* v. *Knight*, 286 Ala. 601, 56 So. 2d 625; *Freeman* v. *McBroom*, 11 Ala. 943.

A party or his privies may assail such a judgment. *Fife* v. *Pioneer Lumber Co.*, 237 Ala. 92, 185 So. 759; *Cobbs* v. *Norvill*, 227 Ala. 621, 151 So. 576.

[fol. 28] The Court is, thereof, of the opinion that the defendant's motion to dismiss is due to be granted.

It is, therefore, ORDERED, ADJUDGED and DECREED that the defendant's motion to dismiss be and the same is hereby granted, and this action be and the same is hereby dismissed at the costs of the plaintiff.

Oone and Ordered, this the 16th day of May, 1963.

H. H. GROOMS
District Judge

[fols. 29-34] • • •

[fol. 35]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 63-119-S

[Title Omitted]

NOTICE OF APPEAL—Filed June 5, 1963

Name and address of Appellant:

Thomas J. Crider
Mentone, DeKalb County, Alabama

Names and addresses of Appellant's Attorneys:

J. Terry Huffstutler
First National Building
Birmingham 3, Alabama

Levine, Fulford & Gwaltney
Frank Nelson Building
Birmingham 3, Alabama

Concise statement of judgment or orders giving date:

The order of the Court dated May 16, 1963, granting defendant's Motion to Dismiss.

The above named Appellant, by and through his attorneys, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the above stated judgment and orders.

Dated: June 5th, 1963.

J. TERRY HUFFSTUTLER and
LEVINE, FULFORD & GWALTNEY
Attorneys for Appellant
By: /s/ Max Pope

[File Endorsement Omitted]

[fol. 36]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 37]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 63-119-S

[Title Omitted]

APPELLANT'S STATEMENT OF POINT—Filed June 5, 1963

The appellant, by and through his attorneys, sets forth and assigns the following point upon which he intends to rely on appeal:

1. The Court erred in granting appellee's motion to dismiss and in denying appellant's motion for summary judgment dated May 16, 1963.

J. TERRY HUFFSTUTLER and
LEVINE, FULFORD & GWALTNEY
By: /s/ Max Pope

CERTIFICATE OF SERVICE [omitted in printing]

[File Endorsement Omitted]

[fols. 38-39]

[fol. 40]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20633

THOMAS J. CRIDER

*versus*

ZURICH INSURANCE COMPANY

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
November 12, 1963

On this day this cause was called, and after argument by Max Pope, Esq., for appellant and Foster Etheredge, Esq., for appellee, was submitted to the Court.

* * * *

[fol. 41]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 20633

---

THOMAS J. CRIDER, APPELLANT

*versus*

ZURICH INSURANCE COMPANY, APPELLEE

---

*Appeal from the United States District Court of the Northern District of Alabama.*

---

PER CURIAM OPINION—November 21, 1963

---

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and JOHNSON, District Judge.

PER CURIAM: The decision of the question presented on this appeal is controlled by *Green* v. *J. A. Jones Const. Co.*, 5th Cir. 1947, 161 F. 2d 359. The judgment of the district court is

AFFIRMED.

* * * *

[fol. 42]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

October Term, 1963

---

No. 20633

---

D. C. Docket No. 20633

THOMAS J. CRIDER, APPELLANT

*versus*

ZURICH INSURANCE COMPANY, APPELLEE

*Appeal from the United States District Court of the Northern District of Alabama.*

Before TUTTLE, Chief Judge, Jones, Circuit Judge, and JOHNSON, District Judge.

JUDGMENT—November 21, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

November 21, 1963

Issued as Mandate:

[fol.43] * * *

[fol. 44]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 45]

SUPREME COURT OF THE UNITED STATES
No. 1061 Misc., October Term, 1963

THOMAS J. CRIDER, PETITIONER

*vs.*

ZURICH INSURANCE COMPANY

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 25, 1964

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1147 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 735511 1061

Office-Supreme Court, U.S.
FILED
FEB 12 1964
JOHN F. DAVIS, CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. [redacted] 116

No. .....

THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI

**To the United States Court of Appeals for the Fifth Circuit.**

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ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

## INDEX.


| | Page |
|---|---|
| Prayer | 1 |
| Opinions | 1 |
| Jurisdiction | 2 |
| Questions presented | 2 |
| Constitutional provisions involved | 3 |
| Statement of the case | 3 |
| Reasons for granting the writ | 4 |
| I. The Circuit Court of DeKalb County, Alabama, is free to enforce the Georgia Compensation Act and the enforcement does not violate the United States Constitution | 4 |
| II. Each state is free to adopt such rules of conflict of law or choice of laws as it chooses as long as the rules do not violate the United States Constitution | 6 |
| III. The Court of Appeals denied to the Alabama Court the right to determine what aspects of the Georgia Compensation Act were matters of procedure and what were substantive matters | 13 |
| IV. The Court of Appeals was in error in denying full faith and credit to the judgment of the Circuit Court of DeKalb County, Alabama | 16 |
| Conclusion | 18 |
| Appendix A—Judgment of the Circuit Court of DeKalb County, Alabama | 21 |
| Appendix B—Order of the United States District Court for the Northern District of Alabama | 23 |
| Appendix C—Judgment of the United States Court of Appeals for the Fifth Circuit | 26 |

## Cases Cited.

Alaska Packers Asso. v. Industrial Acci. Comm., 294 U. S. 532 (1935) ..... 4, 6, 15, 17, 18, 19
Carroll v. Lanza, 349 U. S. 408 (1954) ..... 9, 10, 11, 12, 18, 19
Cooper v. Newell, 173 U. S. 555 (1898) ..... 16
Dollahite-Levy Co. v. Overton, 233 Ala. 12, 133 So. 903 (1931) ..... 13
Green v. J. A. Jones Cons't Co. (C. C. A.—5, 1947), 161 F. 2d 359 ..... 5, 7, 8, 9, 10, 16, 18
Griffin v. McCoach, 313 U. S. 498 (1941) ..... 5, 8
Kenny v. Loyal Order of Moose, 252 U. S. 410 (1920) 17
Kilberg v. Northeast Airlines, Inc., 9 N. Y. 2d 34, 172 N. E. 2d 526 (1961) ..... 14
Moran v. Pittsburg-Des Moines Steel Co. (C. C. A.—3, 1948), 166 F. 2d 908 ..... 13
Pacific Employers Ins. Co. v. Industrial Acci. Comm., 306 U. S. 493 (1938) ..... 4, 6, 7, 8, 12, 15, 16, 17, 19
Pritchard v. Norton, 106 U. S. 124 (1882) ..... 13
Richards v. U. S., 369 U. S. 1 (1962) ..... 8
Wells v. Simonds Abrasive Co., 345 U. S. 514 (1953) 6, 8

## Statutes Cited.

Alabama Code, Tit. 7, Sec. 97 ..... 6
Georgia Code, 114-103 ..... 7, 8, 10
Georgia Code, 114-404 ..... 11
Missouri Revised Statutes, Sec. 287, 120(2) ..... 10
28 U. S. C., Sec. 1254 (1) ..... 1
28 U. S. C., Sec. 1332 ..... 3
28 U. S. C., Sec. 1738 ..... 16

## Constitutions Cited.

Alabama Constitution, Article VI, Sec. 143 ..... 5
United States Constitution, Fourth Article, Sec. 1 .... 3

## Periodical Cited.

6 Alabama Law Review 84 (1953) ..... 5

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No.....

THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI

**To the United States Court of Appeals for the Fifth Circuit.**

To the Honorable The Chief Justice and The Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit which denied enforcement of a judgment rendered by the Circuit Court of DeKalb County, Alabama, in favor of Petitioner.

### OPINIONS BELOW.

The judgment of the Circuit Court of DeKalb County, Alabama (R. 10, Appendix A); the order and opinion of the District Court (R. 26-28, Appendix B); and the opinion of the Fifth Circuit Court of Appeals (R. 41, Appendix C).

## JURISDICTION.

The opinion and judgment (R. 41, Appendix C) of the Fifth Circuit Court of Appeals was entered on November 21, 1963, and the jurisdiction of this court is invoked under 28 U. S. C. A., Sec. 1254 (1).

## QUESTIONS PRESENTED.

### Circumstances of the Case.

Petitioner was awarded a **judgment** in the Circuit Court of DeKalb County, Alabama, based on the Georgia Workmen's Compensation Act (R. 30, Appendix A), and sought to enforce the **judgment** in the United States District Court for the Northern District of Alabama. Petitioner's complaint was dismissed (R. 26-28, Appendix B), and the United States Court of Appeals for the Fifth Circuit affirmed the District Court (R. 41, Appendix C).

### The Questions.

1) Was the Circuit Court of DeKalb County, Alabama, free to enforce the Georgia Compensation Act as long as the enforcement did not violate the United States Constitution?

2) Does the decision of the court below deny to the State of Alabama the freedom to adopt such rules governing conflict of laws as it chooses?

3) Does the Court of Appeals deny to the State of Alabama the right to determine what aspects of a foreign statute were merely matters of procedure, and what were substantive matters?

4) Was the Court of Appeals' judgment in error in denying "Full Faith and Credit" to the **judgment** of the Circuit Court of DeKalb County, Alabama?

## CONSTITUTIONAL PROVISIONS INVOLVED.

The Fourth Article, Section 1, of the United States Constitution is involved:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

## STATEMENT OF THE CASE.

Petitioner filed a suit against A. H. Lawler Construction Company, Inc., a corporation, in the Circuit Court of DeKalb County, Alabama, to recover for injuries sustained in the State of Alabama (R. 8-9). The Respondent had issued a workmen's compensation insurance policy to A. H. Lawler Construction Company, Inc. The Honorable W. M. Beck made a special appearance as attorney for Lawler Construction Company and/or Respondent (R. 19-20), but was later permitted to withdraw from the case (R. 10-21). On February 1, 1959, Petitioner was awarded a **judgment** by the Circuit Court of DeKalb County, Alabama, and said **judgment** was based on the Georgia Workmen's Compensation Law (R. 8-9). Petitioner filed a complaint in the United States District Court for the Northern District of Alabama on March 14, 1963 (R. 1-3) to compel the Respondent to satisfy said **judgment**.

Jurisdiction of the United States District Court was invoked under 28 U. S. C. A., Sec. 1332, due to Petitioner being a citizen of the State of Alabama; the Respondent being a corporation organized and existing under the laws of Switzerland and the State of Illinois having its principal place of business in Chicago, Illinois, and the amount in controversy, other than interest and cost, exceeded Ten Thousand Dollars (R. 1).

Respondent filed a motion to dismiss (R. 4-7), and Petitioner filed an alternative motion for judgment on the pleadings or summary judgment (R. 24-25).

The District Court, by its judgment dated May 16, 1963, granted Respondent's motion to dismiss (R. 26-28, Appendix B). A timely motion for leave to appeal *in forma pauperis* was presented to the District Court (R. 29), and said leave was granted by the court in its order of June 5, 1963 (R. 34). Notice of appeal was filed on June 5, 1963 (R. 35). The Fifth Circuit Court of Appeals affirmed the decision of the District Court on November 21, 1963 (R. 41, Appendix C).

## REASONS FOR GRANTING THE WRIT.

### I.

**The Circuit Court of DeKalb County, Alabama, is free to enforce the Georgia Compensation Act, and the enforcement does not violate the United States Constitution.**

The Supreme Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, 294 U. S. 532, 79 L. Ed. 1044 (1935); and in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, 306 U. S. 493, 83 L. Ed. 940 (1938), was confronted with the problem as to whether or not the forum state should use its own compensation act, or the compensation act of a sister state.

The Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, said:

> "... the **compensation acts** of **either jurisdiction** may, consistently with due process, **be applied in either** [State] ..." 294 U. S. 532, at p. 544 (emphasis supplied).

And in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, this court said:

> "... **either state** ... **would be free** to **adopt** and **enforce** the **remedy provided** by the **statute of the other** [State] ..." 306 U. S. 493, at p. 500 (emphasis supplied).

The DeKalb County Circuit Court did **enforce** the Georgia Compensation Act just as **this Court** said it may do and awarded Petitioner a **judgment** (R. 10, Appendix A). In the light of the foregoing decisions, how could the Court of Appeals hold, as it did, that the Alabama Court could not enforce the Georgia Act?

The Court of Appeals said the case of **Green v. J. A. Jones Construction Company**, 161 F. 2d 359 (5th Cir., 1947), controlled its decision here (R. 41, Appendix C); however, the **Green** case was an original action in the United States District Court in Mississippi, whereas here, Petitioner was awarded a **judgment** by the Alabama Circuit Court based on Georgia Law[1] (R. 10, Appendix A).

The United States District Court in Mississippi uses the conflict of law or choice of laws of Mississippi,[2] not of Alabama or Georgia. The **Green** case is not authority for the Court of Appeals' decision that the Alabama Circuit Court cannot enforce the Georgia Compensation Act.

In fact, Alabama has a statute authorizing the courts of Alabama to enforce foreign created actions. This statute says:

> "Whenever, either by common law or statutes of another state, a cause of action, either upon contract, or in tort, has arisen, in such other state against any

---

[1] The Circuit Court shall have original jurisdiction in all matters civil and criminal within the state not otherwise excepted in this Constitution; but in civil cases, other than suit for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter of sum in controversy exceed fifty dollars. *Alabama Constitution*, Article VI, Section 143.

[2] *Griffin v. McCoach*, 313 U. S. 498, 85 L. Ed. 1481 (1941); 6 *Ala. L. Rev.* 84 (1953).

person or corporation, the **cause of action shall be enforced within** the **courts of this state**, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state." **Ala. Code**, Tit. 7, Sec. 97 (1940) (Recomp. 1958) (emphasis supplied).

Not only has this Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra*, and in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, said that the forum state (Alabama) could enforce the foreign statute, but the legislature of Alabama requires that ". . . [the] **cause** of action **shall be enforced** within the **courts of this state** . . ." **Ala. Code**, Tit. 7, Sec. 97 (1940) (Recomp. 1958). (Emphasis supplied.)

II.

**Each state is free to adopt such rules of conflict of law or choice of laws as it chooses as long as the rules do not violate the United States Constitution.**

This Court has repeatedly held that each state was free to adopt such rules of conflict of laws or choice of laws as it may choose. The Supreme Court in **Wells v. Simonds Abrasive Company**, 345 U. S. 514, 97 L. Ed. 1213 (1953), said:

"The states are free to adopt such rules of conflict of laws as they choose, **Kryger v. Wilson**, 242 U. W. 171, 61 L. Ed. 229, 37 S. Ct. 34 (1916), subject to the Full Faith and Credit Clause and other constitutional restrictions. The Full Faith and Credit Clause does not compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister state." 345 U. S. 514 at p. 516.

In the case of **Pacific Employers Insurance Co. v. Industrial Acci. Comm.**, supra, the Court said:

> "... and the law of neither [State] can by its own force determine the choice of law to be applied in the other." 306 U. S. 493 at p. 500.

There was a conflict of laws or choice of laws problem in Alabama when the DeKalb County Circuit Court was asked to enforce the Georgia Workmen's Compensation Act; however, the Court of Appeals has by its judgment denied to Alabama the right to adopt such rules of conflict of laws as it chooses and has in effect permitted the law of Georgia to determine the choice of laws in Alabama.

The **Green** case, *supra*, which the Court of Appeals said controlled its decision, was an original action in the United States District Court in Mississippi. Petitioner's suit here is on a **judgment** in a Federal District Court in Alabama which was rendered by an Alabama Circuit Court.

The Court in the **Green** case stated:

> "... **The Georgia decisions [Grice v. United States Fid. & Guar. Co.**, 187 Ga. 259, 200 S. E. 700; **Blue Bell Globe Mfg. Co. v. Baird**, 64 Ga. App. 347, 13 S. E. 2d 105; **Echols v. Chattanooga Merc. Co.**, Ga. App., 38 S. E. 2d 675] settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)." (Emphasis supplied.)

Neither the "Georgia decisions" nor the Georgia statute (**Georgia Code**, 114-103) can settle the issue arising from Petitioner's suit on his **judgment** even though both may be controlling in Georgia or Mississippi.

This Court in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, said:

> ". . . the full faith and credit clause does not require one state to substitute . . . the conflicting statute of another state, **even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and event.**" 306 U. S. 493 at p. 502. (Emphasis supplied.)

The United States District Court in Mississippi uses the conflict of laws or choice of laws of Mississippi[3] therefore, the conflict of laws or choice of laws of Mississippi must have been to look to the foreign law (Georgia Law) for both substantive and procedural matters.

No matter what the conflict of laws or choice of laws may be in Mississippi, it **cannot** dictate to the courts in Alabama as to what their conflict of laws or choice of laws should be.[4]

By the Court of Appeals, by its decision, has permitted the conflict of laws or choice of laws of Mississippi to designate the conflict of laws in Alabama. Further, it has permitted Mississippi to determine what effect Alabama has to accord to the exclusive statute of Georgia (**Georgia Code**, 114-103).

In fact, the Georgia Workmen's Compensation statute (Sec. 114-103),[5] the court referred to in the **Green** case

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[3] *Griffin v. McCoach, supra*; 6 *Ala. L. Rev.* 84 (1953).

[4] *Pacific Employers Insurance Company v. Industrial Acci. Comm., supra*; *Wells v. Simonds Abrasive Company, supra*; *Richards v. U. S.*, 369 U. S. 1, 7 L. Ed. 2d 492 (1962).

[5] "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept any pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code*.

as making the Georgia Act "exclusive", has no enforceability as a defense in any state except Georgia **unless** the sister (forum) state **desires to recognize** it as a defense, as the Mississippi Court did in **Green**.

The Supreme Court in **Carroll v. Lanza**, 349 U. S. 408, 99 L. Ed. 1183 (1954), said:

> "Missouri can make her Compensation Act exclusive if she chooses, and enforce it as she pleases within her borders. Once that policy is extended to other States, different considerations come into play." 349 U. S. 408, at p. 413 (Emphasis supplied).

If it were the policy of Mississippi to give the "exclusive" effect to Georgia Act, it was **not** the policy of Alabama to recognize the "exclusive" effect in this case, and the Alabama Court **was not compelled** to do so by the United States Constitution.

This Court has held that the forum does not violate the "Full Faith and Credit" clause by **supplementing** the foreign (Georgia) Compensation Act, and that is the only question this Court has to decide in enforcing Petitioner's **judgment**. In **Carroll v. Lanza**, *supra*, the following statement was made:

> ". . . the **Pacific Employers Insurance Company** Case [306 U. S. 493, 83 L. Ed. 940 (1938)], teaches, she [forum state] may **supplement** it [foreign Compensation Act] **or displace** it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within its border. We **do not** think the **Full Faith and Credit clause** demands that subserviency from the State of the injury." 394 U. S. 408, at p. 414 (Emphasis supplied).

Since the Court of Appeals in the **Green** case, and here, said a sister state (Alabama) was bound by this "exclusive" section of the foreign (Georgia) Compensation Act, and the Supreme Court said the sister state (Arkansas) **was not** bound by the "exclusive" statute of Missouri, the Petitioner would now like to set out each "exclusive" statute for this Court to compare the similarity of the two statutes.

The Supreme Court in **Carroll v. Lanza** said this Missouri "exclusive" statute did not prevent the Missouri Compensation Act from being **displaced** or **supplemented** in Arkansas. The statute says:

"The rights and remedies herein granted to an employee, shall exclude all other rights and remedies of such employee, his wife, her husband, parents, personal representatives, dependents, heirs or next of kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter." Sec. 287. 120(2). **Missouri Revised Statutes** (1959).

The Court of Appeals said this Georgia "exclusive" statute precluded Petitioner's **judgment** from being enforced, and precluded plaintiff's cause of action in **Green**. The statute says:

"The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss or service death." Chapter 114-103. **Georgia Code.**

**What is the difference?** What is there about these statutes that permits the Court of Appeals to reach a different conclusion from the Supreme Court?

From a plain reading of the foregoing Georgia Code section, there appears to be an attempt by the legislature of **Georgia** to deny an employee any other recovery except as the amounts stated in the Compensation Act, but **Carroll v. Lanza** has expressly stated that a sister state (Alabama) is not bound by this type of statute. However, here, and in **Green**, Petitioner sought recovery under the Georgia Compensation Act, and the Court of Appeals has used the **exclusive** word of the Georgia section as a "talismanic" word to deny Petitioner his just and due recovery **under the Georgia Compensation Act.**

The Supreme Court in **Carroll v. Lanza** said that the state of the forum (Alabama) could "supplement" the foreign Compensation Act **or** "displace" it. In Petitioner's case the Alabama Court chose not to displace the Georgia Compensation Act but only chose to "supplement" it as to the **procedures** (court action) that were accorded to Petitioner to recover for his injuries by said Compensation Act.

The procedural aspect of the Georgia Compensation Act was the only part displaced or **supplemented** as **Carroll v. Lanza** said could be done by the sister state (Alabama), because the DeKalb County Circuit Court found from the evidence presented that Petitioner was "totally and permanently disabled" (R. 10, Appendix A). When an employee covered by the Georgia Compensation Act is "totally and permanently disabled", that Act has a section[6] dealing expressly with total disability payments

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[6] "When the incapacity to work is resulting from an injury is total, the employer shall pay or cause to be paid, as hereinafter provided for, to the employees during such total incapacity a weekly compensation equal to 60 percent of his average wages, but not more than $30 per week nor less than $10 per week, except when then weekly wage is below $10 then the regular wages on the date of the accident shall be the weekly amount paid, and in no case shall the period covered by such compensation be greater than 400 weeks nor shall the total amount of compensation exceed $10,000." Chapter 114-404, *Georgia Code*.

which any intelligent person can compute; and the DeKalb County Circuit Court did not exceed the $10,000 limitation (R. 10, Appendix A) imposed by this section. What detriment has Respondent suffered by the DeKalb County Circuit Court computing the amounts set out in that section?

Respondent may argue that **Carroll v. Lanza** stands for one proposition alone: that a foreign Compensation Act would not bar a common-law action in the forum of a sister state; but this Court in **Carroll v. Lanza** said:

> "For we **write not only for this case** and this day alone **but for this type of case.**" 349 U. S. 408 at p. 413. (Emphasis supplied.)

Petitioner's case is the **same** "type" of case as **Carroll v. Lanza** in which the Compensation Act was asserted as a defense. Here it was asserted to obtain affirmative relief, and the procedural aspect of the Act is **now** raised as a defense to Petitioner's **judgment.** Did not the words in the **Carroll v. Lanza** authorize the DeKalb County Circuit Court to "supplement" the Georgia Compensation Act by using its own procedure (the court action) when the Supreme Court said:

> ". . . the **Pacific Employers Ins. Co.** case [306 U. S. 493, 83 L. Ed. 940 (1938)] teaches, she [forum state] may **supplement** it [foreign Compensation Act] or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within her border . . ." 349 U. S. 408 at p. 414. (Emphasis supplied.)

And especially since in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, this Court said:

". . . either state . . . would be free to **adopt** and **enforce** the remedy provided by the statute of the other [state]." 306 U. S. 493 at p. 500. (Emphasis supplied.)

III.

**The Court of Appeals denied to the Alabama Court the right to determine what aspects of the Georgia Compensation Act were matters of procedure and what were substantive matters.**

It has long been the rule of this Court and the Alabama Courts[7] that matters of procedure are governed by the local law or law of the forum while the substantive matters are governed by the foreign law.

In 1882 the Supreme Court in **Pritchard v. Norton**, 106 U. S. 124, 27 L. Ed. 104, said:

". . . a civilized State . . . adheres to its own system of formal judicial procedure and remedies. And . . . the law of the procedure and remedy, . . . **must be** domestic and **local**. In respect to the latter, the foreign law is rejected; but how and where to draw the line of precise classification is not always easy to determine." 106 U. S. 124 at p. 129. (Emphasis supplied.)

As the Court in **Pritchard v. Norton** said it is not easy to determine the distinction between procedure and substantive matters, but the court of the forum (Alabama) or local law (Alabama) controls as to making this characterization.

In **Moran v. Pittsburg-DesMoines Steel Co.**, 166 F. 2d 908 (3rd Cir., 1948), Cert. den. 334 U. S. 846, 92 L. Ed. 1770, the court said:

[7] *Dollahite-Levy Company v. Overton*, 233 Ala. 12, 133 So. 903 (1931).

"... Likewise, ... the application of ... conflict of laws determining whether a given question is to be characterized as substantive ... or procedural, ... the law of the forum, controls ..." 166 F. 2d 903 at p. 910.

To illustrate how clear the rule seems to be that the forum State determines the characterization of what matters are procedural and what are substantive: That the law relating to the amount of damages recoverable was a matter of substantive law was so universal that citations here are unnecessary; however, in the recent case of **Kilberg v. Northeast Airlines, Inc.**, 9 N. Y. 2d 34, 172 N. E. 2d 526 (1961), matters concerning the amount of damages recoverable was determined to be purely procedural and **not substantive**, thereby permitting the forum state (New York) to disregard the limitation of damages placed on the cause of action by the sister state (Massachusetts).

The Court of Appeals of New York in **Kilberg** said:

> "Some of the **older** Federal cases ... give defendants the benefit of limitations of damages found in the law of the place of wrong, regardless of where the actions were brought. Those cases, however, are not binding on us and **do not bring into play** the **full faith** and **credit** clause of the Constitution, Art. 4, Sec. 1 (see **Wells v. Simonds Abrasive Company**, 345 U. S. 514, 73 S. Ct. 856, 97 L. Ed. 1211)." 172 N. E. 2d 526 at p. 529. (Emphasis supplied.)

It was not a violation of the "Full Faith and Credit" clause for the Alabama Court to determine that the Georgia Compensation Act's requirement that Petitioner file his claim before the Board in Georgia[8] was merely pro-

[8] (R. 5).

cedural; therefore Petitioner's **judgment** was not subject to collateral attack.

The Respondent may argue that the procedure and right are so closely related that the Alabama Circuit Court could not enforce Petitioner's right; however, the forum state (Alabama) must make this determination and **not** the Court of Appeals when it is asked to enforce Petitioner's **judgment.**

Such argument cannot prevail when this Court in **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra*, said:

> ". . . the **compensation acts** of **either jurisdiction** may, consistently with due process, **be applied in either** [state] . . ." 294 U. S. 532 at p. 544. (Emphasis supplied.)

And in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, the Supreme Court said:

> ". . . **either state** . . . **would be free** to **adopt** and **enforce** the **remedy provided** by the **statute** of the **other** [state] . . ." 306 U. S. 493 at p. 500. (Emphasis supplied.)

If the forum state is prohibited from determining what aspects of a foreign statute were procedural and substantive then the state of the forum (Alabama) would also be prohibited from providing protection for its citizens injured within its borders and they would become public charges for the state to provide for their upkeep. This was the rationale of the **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra* and **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*.

The Alabama Court was correct in enforcing the Georgia Compensation Act, and the **judgment** rendered in ac-

cordance with its provisions was entitled to "Full Faith and Credit" by the Court of Appeals.

## IV.

**The Court of Appeals was in error in denying Full Faith and Credit to the judgment of the Circuit Court of DeKalb County, Alabama.**

In **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, the Supreme Court said:

> "... either state ... would be **free** to **adopt** and **enforce** the remedy provided by the statute of the other [state] ..." 306 U. S. 493 at p. 500. (Emphasis supplied.)

And in **Cooper v. Newell**, 173 U. S. 555, 43 L. Ed. 808 (1898), this Court said:

> "... courts of the United States are bound to give to the judgments of the state courts the same faith and credit that the courts of one state are bound to give to the judgments of the courts of her sister states." 173 U. S. 555, at p. 567.

Petitioner's **judgment** awarded by the DeKalb County Circuit Court was to be accorded "Full Faith and Credit" by the Court of Appeals[9] and was not subject to collateral attack once the Supreme Court had said the court of the forum (Alabama) could **adopt** and **enforce** the Georgia Compensation Act.

The Court of Appeals is therefore in error for not according "Full Faith and Credit" to Petitioner's **judgment**.

**Green v. J. A. Jones Construction Co.**, *supra*, which the Court of Appeals said controlled Petitioner's suit on his

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[9] See 28 U. S. C. A., Sec. 1738.

**judgment**, would not be authority for even a court in Mississippi or Georgia to deny "Full Faith and Credit" to Petitioner's cause of action on his **judgment**.

This court in **Kenney v. Loyal Order of Moose**, 252 U. S. 410, 64 L. Ed. 638 (1920), said:

> "... Therefore the fact that here the original cause of action could not have been maintained in Illinois [Georgia or Mississippi] is not an answer to a suit upon the judgment." 252 U. S. 410, at p. 415.

The DeKalb County Circuit Court was also confronted with a Full Faith and Credit problem when it was asked to enforce the Georgia Compensation Act. The Supreme Court in **Alaska Packers Assoc. v. Industrial Acci. Comm.**, *supra*, said:

> "... rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, **but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.**" 294 U. S. 532, at p. 547 (Emphasis supplied).

When the DeKalb County Circuit Court appraised the governmental interest of Alabama and Georgia, the "scale of decision" was balanced in favor of Alabama and Petitioner. Then the Circuit Court **adopted** and **enforced** the remedy provided for in the Georgia Workmen's Compensation Act just as the Supreme Court in **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*, said the court of the forum (Alabama) could do.

Once the Alabama Court had appraised the governmental interest of both states and rendered a **judgment** for

Petitioner; then it was error for the Court of Appeals not to accord "Full Faith and Credit" to the **judgment.**

The court in the **Green** case, *supra*, for all intents and purposes was a Mississippi Court (United States District Court in Mississippi). How can a Mississippi Court weigh the governmental interest of Alabama and Georgia? The **Alaska Packers** case said for the state confronted with the "Full Faith and Credit" problem to weigh the governmental interest and **not a third disinterested state.**

It is the State of Alabama that has the duty to prevent its citizens from becoming public charges and not the State of Mississippi or the State of Georgia.[10]

## CONCLUSION.

Petitioner's **judgment** was not subject to collateral attack because the Circuit Court of DeKalb County, Alabama, which rendered the judgment was correct when it enforced the Georgia Compensation Act and used its own conflict or choice of laws to do so.

The Court of Appeals erred in prohibiting the Alabama Court from enforcing the Georgia Compensation Act when it required the Alabama Court to use the conflict or choice of laws of Mississippi. This erroneous decision of the Court of Appeals also required the Alabama Court to use the conflict or choice of laws of Mississippi to weigh the "governmental interests" of Alabama in preventing its citizens from becoming public charges.

Further, the Court of Appeals erred in not according "Full Faith and Credit" to Petitioner's judgment and per-

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[10] *Alaska Packers Assoc. v. Industrial Acci. Comm., supra. Pacific Employers Ins. Co. v. Industrial Acci. Comm., supra; Carroll v. Lanza, supra.*

mitting it to be collaterally attacked when said **judgment** was rendered in accordance with the reasoning of the decisions of this Court and without any constitutional rights denied to Respondent.

Granting the writ prayed for will permit this Court to ascertain the similarity in Petitioner's case and **Alaska Packers Asso. v. Industrial Acci. Comm.**, *supra*; **Pacific Employers Ins. Co. v. Industrial Acci. Comm.**, *supra*; **Carroll v. Lanza**, *supra*; and to determine if Petitioner's case should be governed by the rules announced in those decisions.

For the reasons set out above it is respectfully submitted that this petition for certiorari should be granted.

J. TERRY HUFFSTUTLER,
First National Building,
Birmingham, Alabama,
Counsel for Petitioner.

Of Counsel:
MAX C. POPE,
LEVINE, FULFORD, GWALTNEY & POPE.
510 Frank Nelson Building,
Birmingham, Alabama.

**Proof of Service.**

I, J. Terry Huffstutler, one of the attorneys for Thomas J. Crider, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of February, 1964, I served copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the Respondent thereto by mailing a copy in a duly ad-

dressed envelope, first class postage prepaid, to the Honorable Foster Etheredge of the law firm of Spain, Gillon and Young, First National Building, Birmingham 3, Alabama, the attorney of record for Respondent.

J. Terry Huffstutler,
First National Building,
Birmingham 3, Alabama,
Attorney for Thomas J. Crider.

## APPENDIX A.

### JUDGMENT OF COURT AWARDING COMPENSATION.

In the
Circuit Court of DeKalb County, Alabama.

Thomas J. Crider,
Plaintiff,
vs.
A. H. Lawler Construction Company, Inc., a Corporation,
Defendant.
No. 590.

This day came the Plaintiff, Thomas J. Crider, with his attorney, J. Terry Huffstutler; and the defendant, A. H. Lawler Construction Company, Inc., a corporation, failing to appear (the Court having granted the request of the withdrawal as attorney for the defendant made by Hon. W. M. Beck and the Court further being satisfied that defendant was notified of the withdrawal of representation by Hon. W. M. Beck); and after hearing the evidence on the amended complaint of Plaintiff, the Court is of the opinion that the Plaintiff is totally and permanently disabled as a result of the injuries sustained while acting within the line and scope of his employment for the defendant, and it is the judgment of the Court, that compensation be and the same is hereby awarded to the Plaintiff in the sum of Ten Thousand Dollars ($10,000.00) and the further sum of Five Hundred Dollars ($500.00) for medical expenses.

It is, therefore, considered, ordered and adjudged by the Court that the Plaintiff have and recover from the Defendant the said sum of Ten Thousand Five Hundred Dol-

lars ($10,500.00) in one lump sum, together with costs in this behalf expended, for all of which execution may issue.

It is further considered and ordered by the Court, and it is the judgment of the Court, that the attorney's fee of J. Terry Huffstutler, for the Plaintiff, be and the same is hereby fixed at Three Thousand Five Hundred Dollars ($3,500.00).

The foregoing order and judgment entered this 11th day of February 1959.

/s/ W. J. Haralson,
Circuit Judge.

I, Herbert G. Tate, Clerk of the Circuit Court, DeKalb County, Alabama, do hereby certify the foregoing to be a true and correct copy of the Judgment entry in this case. Recorded in Civil Minute Record L, pages 513 and 514.

Given under my hand and official Seal of office, this the 10th day of February, 1961.

Herbert G. Tate,
Circuit Clerk.

(Seal)

## APPENDIX B.

(ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA.)

In the United States District Court for the
Northern District of Alabama,
Southern Division.

Thomas J. Crider,
Plaintiff,

vs.

Zurich Insurance Company,
a Corporation,
Defendant.

Civil Action.
No. 63-119-S.

This matter came on for hearing at this time upon the plaintiff's motion for summary judgment and upon the defendant's motion to dismiss.

From the proceedings herein, the following facts appear to be undisputed:

Plaintiff, Thomas J. Crider, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Both Crider and Lawler were under and subject to the Workman's Compensation Act of Georgia at the time the former was injured. Crider instituted a suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeking recovery under three counts, the first count being under the Alabama Compensation Law and Counts Two and Three being under the common law.

On February 11, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial, and added Count A under the Georgia Com-

pensation law. On the following day judgment by default was entered against Lawler for the sum of $10,500, together with costs.

The defendant herein, Zurich Insurance Company, a corporation, was the Workman's Compensation insurer of Lawler. It claims that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter, and that this action cannot be maintained against Zurich who is in privity with Lawler, and that the judgment is void.

The Court has heard oral argument, has considered the briefs and reviewed the authorities, and is of the opinion that the defendant's contention is well taken.

In **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, the Court of Appeals for the Fifth Circuit, held that the Circuit Court of Hinds County, Mississippi, and the United States District Court for the Southern District of Mississippi did not have jurisdiction to award damages under the Georgia Workmen's Compensation Act in an original proceeding filed in the former court and removed to the United States District Court. The Court ruled that the Georgia decisions

> "settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)."

A different situation would be presented if the Georgia Compensation Act vested in the Georgia courts the power to entertain an original suit for workmen's compensation. To permit this original action in the courts of Alabama is to allow an original proceeding in such courts where the same is denied to the courts of Georgia.

Since the DeKalb County Circuit Court did not have jurisdiction of the subject matter, the issue of jurisdiction is open to inquiry and where, as here, the record discloses a lack of jurisdiction, the judgment is void. **City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 240; **Murphy v. L. & N.**, 258 Ala. 138, 61 So. 2d 3; **Crump v. Knight**, 286 Ala. 601, 56 So. 2d 625; **Freeman v. McBroom**, 11 Ala. 943.

A party or his privies may assail such a judgment. **Fife v. Pioneer Lumber Co.**, 237 Ala. 92, 185 So. 759; **Cobbs v. Norvill**, 227 Ala. 621, 151 So. 576.

The Court is, thereof, of the opinion that the defendant's motion to dismiss is due to be granted.

It is, therefore, Ordered, Adjudged and Decreed that the defendant's motion to dismiss be and the same is hereby granted, and this action be and the same is hereby dismissed at the costs of the plaintiff.

Done and Ordered, this the 16th day of May, 1963.

H. H. Grooms,
District Judge.

A true copy.

William E. Davis, Clerk,
United States District Court,
Northern District of Alabama,
By Jewel M. Massey,
Deputy Clerk.

(Seal)

## APPENDIX C.

### JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

In the
United States Court of Appeals
For the Fifth Circuit.

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No. 20633.

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Thomas J. Crider,
Appellant,

versus

Zurich Insurance Company,
Appellee.

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Appeal from the United States District Court for the Northern District of Alabama.

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(November 21, 1963.)

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Before Tuttle, Chief Judge, Jones, Circuit Judge, and Johnson, District Judge.

Per Curiam: The decision of the question presented on this appeal is controlled by **Green v. J. A. Jones Const. Co.**, 5th Cir. 1947, 161 F. 2d 359. The judgment of the district court is

Affirmed.

A true copy.

Test: Edward W. Wadsworth,
Clerk, U. S. Court of Appeals, Fifth Circuit.

By .....

(Seal) Deputy.

New Orleans, Louisiana, Dec. 4, 1963.

Office-Supreme Court, U.S.
FILED
MAR 9 1964
JOHN F. DAVIS, CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. [redacted] 116

[redacted]

THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

## RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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## INDEX.


Page

Statement of the case ..... 1

Argument ..... 4

I. Where the provision for the liability claimed is coupled with the provision for a special remedy to be afforded not by a court but by a commission, that remedy alone must be employed and resort to court action may not be had for relief 4

II. A party or his privies will be permitted to attack a judgment collaterally where the judgment is void for want of jurisdiction of the court over the subject matter ..... 13

III. When a judgment of a state court comes under consideration in a court of the United States the question of jurisdiction of the state court to render the judgment is open to inquiry in the United States court ..... 14

Conclusion ..... 15

Appendix A—Proceedings in the Circuit Court of Jefferson County, Alabama ..... 18

Appendix B—Workmen's Compensation Law of Alabama ..... 41

Appendix C—Workmen's Compensation Law of Georgia ..... 43


### Cases Cited.


Adam v. Saenger, 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649 ..... 15

Alaska Packers Asso. v. Industrial Acc. Comm., 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044 ..... 10, 11

Blue Bell Globe Mfg. Co. v. Baird, 64 Ga. App. 347, 13 S. E. 2d 105 ..... 5

Carroll v. Lanza, 349 U. S. 408, 75 S. Ct. 804, 99 L. Ed. 1183 ..... 10, 11

City of Birmingham v. Reed, 35 Ala. App. 31, 44 So. 2d 607 ..... 13, 14

Cobbs v. Norville, 227 Ala. 621, 151 So. 576 ..... 13

Cooper v. Newell, 173 U. S. 555, 19 S. Ct. 506, 43 L. Ed. 808 ..... 14

Crider v. Zurich Insurance Company, 224 F. Supp. 87 (N. D. Ala, 1963) ..... 2, 15, 16

Crider v. Zurich Insurance Company, 324 F. 2d 499 (5th Cir. 1963) ..... 2, 15

Crump v. Knight, 256 Ala. 601, 56 So. 2d 625 ..... 13, 14

Davis v. Swift & Co., 175 Tenn. 210, 133 S. W. 2d 483 .. 8

Douthwright v. Champlin, 91 Conn. 524, 100 A. 97 .... 8

Echols v. Chattanooga Mercantile Co., Ga. App., 38 S. E. 2d 675 ..... 5

Fife v. Pioneer Lumber Co., 237 Ala. 92, 185 So. 759 .. 13

Freeman v. McBroom, 11 Ala. 943 ..... 13, 14

Fresquez v. Farnsworth and Chambers Co., 238 F. 2d 709 (10th Cir. 1956) ..... 8

Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 490, 32 S. Ct. 205, 56 L. Ed. 522 ..... 6

Green v. J. A. Jones Construction Company, 161 F. 2d 359 (5th Cir. 1947) ..... 4, 5, 8, 9, 10, 15

Grenier v. Alta Crest Farms, Inc., 58 A. 2d 884 ..... 5, 8

Grice v. United States Fidelity & Guaranty Co., 187 Ga. 259, 200 S. E. 700 ..... 5

Griffin v. Griffin, 327 U. S. 220, 66 S. Ct. 556, 90 L. Ed. 635 ..... 15

Johnson v. Employers Liability Assurance Corp., 99 S. W. 2d 979 ..... 8

Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 ..... 8

Merrell et al. v. United States et al., 140 F. 2d 602 (10th Cir. 1944) ..... 15

Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223 ..... 7, 8

Murphy v. L. & N., 258 Ala. 138, 61 So. 2d 3 ..... 13, 14

Pacific Employers Ins. Co. v. Industrial Acc. Comm., 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940 ..... 10, 11

Pearson v. Northeast Airlines, Inc., 309 F. 2d 553 (2nd Cir. 1962) ..... 11

People of State of New York ex rel. Halvey v. Halvey, 330 U. S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 ..... 15

Pollard v. Bailey, 22 L. Ed. 376 ..... 6

Singleton v. Hope Engineering Co., 223 Ala. 538, 137 So. 441 (1931) ..... 4, 9, 10, 15

Stewart v. Baltimore & Ohio RR. Co., 168 U. S. 445. 18 S. Ct. 105, 42 L. Ed. 537 ..... 6

Tenn. Coal, Iron & RR. Co. v. George, 233 U. S. 354. 35 S. Ct. 587, 58 L. Ed. 997 ..... 6

Tilt v. Kelsey, 207 U. S. 43, 28 S. Ct. 1, 52 L. Ed. 95 .. 14

Verdicchio v. McNab and Harlin Mfg. Co., 164 N. Y. S. 290, 178 App. Div. 48 ..... 8

Woolf v. McGaugh, 175 Ala. 299, 57 So. 754 ..... 14

**Statutes Cited.**

Ala. Code, 1940, Title 26, Sec. 279 (e) (3) and Sec. 289 ..... 12

Ga. Code, Title 114, Workmen's Compensation, Sec. 114-411 ..... 4, 12

## Textbooks Cited.

99 C. J. S., Workmen's Compensation, Sec. 22..... 5
100 C. J. S., Workmen's Compensation, Sec. 426..... 5
Larson's Workmen's Compensation Law, Sec. 84.20.. 7
Restatement, Conflict of Laws, Sec. 618, Conditional Cause of Action ..... 7

IN THE

# SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM, 1963.

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No. 1061—Misc.

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THOMAS J. CRIDER,
Petitioner,

versus

ZURICH INSURANCE COMPANY,
Respondent.

---

## RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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### STATEMENT OF THE CASE.

The sole issue is whether Crider, the Petitioner, can collect workman's compensation benefits under the Georgia Workmen's Compensation Law in an Alabama court proceeding.

The issue arises out of a suit in the District Court on a void judgment rendered by an Alabama trial court. Respondent moved to dismiss the case on the ground that

the judgment was void in that the Alabama court did not have jurisdiction of the subject matter of the suit. The issue here was raised by the District Court below granting the Respondent's motion to dismiss (R. 26-28; **Crider v. Zurich Insurance Company**, 224 F. Supp. 87 (N. D. Ala. 1963)) and the affirmance of the decision of the District Court by the Fifth Circuit Court of Appeals (R. 41; **Crider v. Zurich Insurance Company**, 324 F. 2d 499 (5th Cir. 1963)).

The Petitioner, plaintiff below, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Crider and Lawler were under and subject to the Workmen's Compensation Law of Georgia at the time Crider was injured. Both were under and subject to the Workmen's Compensation Law of Alabama. On the 3rd day of July, 1957, Crider instituted suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeking recovery under three counts, the first count being under the Alabama Workmen's Compensation Law and counts two and three being under the common law (R. 8-9; see also Exhibit A of Appendix A). Respondent, Zurich Insurance Company, was not a party to this suit.

On February 10, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial and added Count A claiming under the Georgia Workmen's Compensation Law (R. 8-9). A default judgment was entered in the case on the 11th day of February, 1959, awarding compensation to Crider under the Workmen's Compensation Law of the State of Georgia (R. 8-9).

The respondent, Zurich Insurance Company, defendant below, was the workmen's compensation insurer of Lawler and as such was in privity with Lawler. On February

15, 1960, Crider filed a suit on the judgment against respondent in the Circuit Court of Jefferson County, Alabama (Appendix A), to which complaint respondent filed special pleas setting up the Georgia Workmen's Compensation statute and attacking the DeKalb County Circuit Court judgment as being void for lack of jurisdiction of the subject matter. Petitioner's demurrer to the pleas were overruled and on March 13, 1963, Petitioner dismissed this suit after the Alabama Circuit Court's adverse ruling on his demurrer to the respondent's pleas (Appendix A).

On March 14, 1963, Crider filed a Civil Action in the United States District Court for the Northern District of Alabama which was a suit on the judgment rendered by the DeKalb County Circuit Court on February 11, 1959 (R. 1-3). To the Petitioner's complaint respondent filed a motion to dismiss (R. 4-7). The District Court on May 16, 1963, granted respondent's motion to dismiss (R. 26-28). The Court of Appeals of the Fifth Circuit affirmed the judgment of the District Court on November 21, 1963 (R. 41).

## ARGUMENT.

### I.

### Where the Provision for the Liability Claimed Is Coupled With the Provision for a Special Remedy to Be Afforded Not by a Court But by a Commission, That Remedy Alone Must Be Employed and Resort to Court Action May Not Be Had for Relief.

The Circuit Court of DeKalb County, Alabama, was not free to enforce the Georgia Workmen's Compensation Act[1] and the judgment of the DeKalb County Circuit Court of Alabama on which the District Court suit was based is void and was subject to attack in the District Court. Crider, the Petitioner, was employed by Lawler to work in Alabama where he was injured. Both were under and subject to the Workmen's Compensation Law of the State of Georgia for the Georgia law gives extra territorial effect to its Workmen's Compensation Law.[2] Likewise, Crider and Lawler were under and subject to the Workmen's Compensation Law of Alabama. Alabama will apply

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[1] Singleton v. Hope Engineering Co., 223 Ala. 538, 137 So. 441 (1931); Green v. J. A. Jones Construction Company, 161 F. 2d 359 (5th Cir. 1947).

[2] Ga. Code, Title 114, Workmen's Compensation, Sec. 114-411:

"Accidents outside of State.—Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State; Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title."

its Compensation Law to an injury occurring in the State of Alabama.[3]

An Alabama Circuit Court can apply the Alabama Workmen's Compensation Law in a proceeding in the Alabama Court (Appendix B). But an Alabama Court cannot apply the Georgia Workmen's Compensation Law (Appendix C) in a proceeding in the Alabama Court. The remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act is an exclusive one which can be afforded only by the Georgia State Board of Workmen's Compensation (formerly named Industrial Board) in a proceeding brought before it as the statute provides (Appendix C). This has been established by the Georgia decisions.

**Grice v. United States Fidelity & Guaranty Co.**, 187 Ga. 259, 200 S. E. 700;

**Blue Bell Globe Mfg. Co. v. Baird**, 64 Ga. App. 347, 13 S. E. 2d 105;

**Echols v. Chattanooga Mercantile Co.**, Ga. App., 38 S. E. 2d 675.

The judgment is void for the DeKalb County Circuit Court did not have jurisdiction of the subject matter. 100 C. J. S., **Workmen's Compensation**, Sec. 426, page 285; **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359 (5th Cir. 1957); **Grenier v. Alta Crest Farms, Inc.**, 58 A. 2d 884.

The Fifth Circuit case of **Green v. J. A. Jones Construction Co.**, *supra*, is decisive of this point and there is no conflicting authority. Filed in the Circuit Court of Hinds County, Mississippi, and thence removed to the United States District Court, the suit was an original proceeding brought for compensation due plaintiff under the Georgia Workmen's Compensation Act. Moving to dismiss for want of jurisdiction, defendant urged that the remedy

[3] 99 C. J. S., Workmen's Compensation, Section 22.

afforded by the Georgia Workmen's Compensation Act was by an original proceeding before the Georgia State Board of Workmen's Compensation, that it was exclusive, and that neither the United States Court nor the Circuit Court of Hinds County, Mississippi, nor any other tribunal than the Georgia State Board had jurisdiction of it. The District Judge ruled that the motion was well taken and entered his order dismissing the cause for want of jurisdiction. The Fifth Circuit Court of Appeals agreed holding that the case was ruled by the principle that where the provision for the liability claimed is coupled with the provision for a special remedy to be afforded not by a court but by a commission, that remedy and that remedy alone must be employed and resort to court action may not be had for relief.

It has been held that the only actions to secure compensation under a foreign compensation act which cannot be enforced by the courts of the jurisdiction where the injury occurred are those where the right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the Act. It has been universally held that where the foreign act gives no independent cause of action enforceable anywhere, but merely provides an administrative remedy by prescribed procedure as a substitute for any cause of action that there might otherwise be, compensation cannot be awarded by the courts of another jurisdiction.[4]

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[4] "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the Act. For the rule is well settled that where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed." Tenn. Coal, Iron & RR. Co. v. George, 233 U. S. 354, 35 S. Ct. 587, 58 L. Ed. 997; Pollard v. Bailey, 22 L. Ed. 376; Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 490, 32 S. Ct. 205, 56 L. Ed. 522; Stewart v. Baltimore & Ohio RR. Co., 168 U. S. 445, 18 S. Ct. 105, 42 L. Ed. 537.

American Law Institute's Restatement, **Conflict of Laws**, is in accord with these holdings.[5]

The textwriters agree that a claim to be valid must follow the designated procedure, and under the requirement that only the special tribunal created by the particular state can administer claims thereunder, rights created by the compensation act of one state cannot ordinarily be enforced in another state or in a Federal Court.[6]

As was held in **Mosely v. Empire Gas & Fuel Co.**, 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223, a statute of Kansas cannot confer upon a Missouri court in a suit for money, a jurisdiction and a power wholly unknown to the Missouri Code of Procedure. Such a statute cannot do this directly nor can it do so indirectly through an attempted authorization of the Missouri Court to make rules necessary and appropriate to carry out the purpose of the Kansas statute. By that statute the right and remedy are so united, and the provision of liability is so coupled with a provision for a special remedy to be administered by designated tribunal with certain specific powers given that the remedy must be sought in the designated tribunal.

Many jurisdictions have refused to apply the Compensation Law of another state wherein the other state law pro-

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[5] Restatement, Conflict of Laws, Sec. 618. Conditional Cause of Action.—

"If a state makes the existence of a cause of action conditional on some act or event, no suit can be maintained in another state unless the condition is satisfied."

"Comment: a. Where a statutory foreclosure act requires that the land must first be applied to the satisfaction of the debt before a cause of action arises, no action will lie in another state to recover the amount due until the land has first been applied to the satisfaction of the debt. *So where a Workmen's Compensation Act provides for the fixing of the amount of compensation by a commission, no action can be brought on such a claim in another state until the amount of compensation has been so fixed*" (Emphasis supplied).

[6] Larson's Workmen's Compensation Law, Sec. 84.20. Page 356.

vided that the law be administered by an Industrial Commission or Workmen's Compensation Board.[7]

The United States Court of Appeals for the Tenth Circuit has recognized the rule of **Green v. J. A. Jones Construction Co.**, *supra*.[8]

In the case of **Grenier v. Alta Crest Farms**, 58 A. 2d 884, the plaintiff brought a suit against the defendant claiming compensation under the Workmen's Compensation Act of Massachusetts before the Industrial Relations Board of Vermont. Massachusetts had an Industrial Board. The Vermont Court held that the Vermont Board of Industrial Relations and the courts of Vermont did not have jurisdiction of the case.[9]

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[7] Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 (Arkansas refused to apply the Oklahoma Act);
Douthwright v. Champlin, 91 Conn. 524, 100 A. 97 (Connecticut refused to apply the Massachusetts Act);
Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223 (Missouri refused to apply the Kansas Act);
Davis v. Swift & Co., 175 Tenn. 210, 133 S. W. 2d 483 (Tennessee refused to apply the Florida Act);
Johnson v. Employers Liability Assurance Corp., 90 S. W. 2d 970 (Texas refused to apply the Louisiana Act);
Verdicchio v. McNab and Harlin Mfg. Co., 164 N. Y. S. 200, 178 App. Div. 48 (New York refused to apply the New Jersey Act);
Grenier v. Alta Crest Farms, 58 A. 2d 884 (Vermont refused to apply the Massachusetts Act).

[8] See Fresquez v. Farnsworth and Chambers Co., 238 F. 2d 709 (10th Cir. 1956), where the Court says:

> "But where a statute creates a right and provides a remedy for its enforcement in a certain tribunal, and the two are inseparably blended and united, the right can be enforced only in the specified tribunal. Pollard v. Bailey, 20 Wall. 520, 526, 527, 22 L. Ed. 376; Tenn. Coal, Iron & RR. Co. v. George, 233 U. S. 354, 34 S. Ct. 587, 58 L. Ed. 997."

[9] The Vermont Court correctly stated the appropriate principle:

> "* * * While the statutes give a right to compensation to an employee who comes within its terms, it also provides a specific and exclusive remedy for the enforcement of that right before a special tribunal created for such purpose. If an em-

Search as we may we have found no cases contrary to the holding of **Green v. J. A. Jones Construction Co.**, *supra*. The Petitioner has cited no cases in opposition to this holding. Petitioner seems to rest his argument on the proposition that the DeKalb County Circuit Court of Alabama was free to apply its own choice of law. Petitioner overlooks the Alabama case of **Singleton v. Hope Eng. Co.**, 223 Ala. 538, 137 So. 441 (1931). The Alabama Supreme Court has already held that the Courts in Alabama have no jurisdiction to litigate issues of fact arising under the Georgia Workmen's Compensation statute because such are vested exclusively under the Georgia Workmen's Compensation Board. In denying jurisdiction to a claim for benefits the Alabama Supreme Court said:

"The right sought to be enforced had its origin and existence in the Georgia Workmen's Compensation statute. The remedies for its breach are recoverable in the manner provided by proper pleading and

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ployee seeks the benefits given him by the statute he is bound to recognize and perform the obligation thereby placed upon him. Such right is limited and can be enforced only by following the procedure given by the statute which created such right. The remedy is an integral part of the right given and the latter has no existence separate and apart from the former. United States ex rel. Texas Portland Cement Co., etc. v. McCord, 233 U. S. 157, 34 S. Ct. 550, 552, 58 L. Ed. 893; Galveston H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 490 32 S. Ct. 205, 56 L. Ed. 516; Globe Newspaper Co. v. Walker, 210 U. S. 356, 28 S. Ct. 726, 52 L. Ed. 1096; Fourth Natl. Bank v. Francklyn, 120 U. S. 747, 756, 7 S. Ct. 757, 30 L. Ed. 825; Pollard v. Bailey, 20 Wall. 520, 526, 527, 22 L. Ed. 376; Hartford Acc. & Ind. Co. et al. v. Delta & Pine Land Co., 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A. L. R. 928; Devine's Case, 236 Mass. 588, 592, 129 N. E. 414, 416; Migue's Case, 281 Mass. 373, 183 N. E. 847, 848."

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"It follows that the commissioner of industrial relations is without jurisdiction to entertain the petition filed with him in the case at bar. The employee has no right arising under the Massachusetts Workmen's Compensation Act, * * * which he can enforce before the commissioner or the courts of this state."

procedure before the industrial commission of our sister state."

The decision of the court below does not deny to the State of Alabama the freedom to adopt such rules governing conflict of laws as it chooses. The choice of laws has been made in Alabama. The Alabama Supreme Court has spoken.

Petitioner seems to place great reliance on **Alaska Packers Asso. v. Industrial Acc. Comm.**, 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044; **Pacific Employers Ins. Co. v. Industrial Acc. Comm.**, 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940; and **Carroll v. Lanza**, 349 U. S. 408, 75 S. Ct. 804, 99 L. Ed. 1183. These cases cited by the Petitioner are not inconsistent with the position taken throughout this case by the Respondent. None of the cases cited pronounce any principles contrary to the holdings in **Green v. J. A. Jones Construction Co.**, *supra*, and **Singleton v. Hope Eng. Co.**, *supra*. In **Alaska Packers Asso. v. Industrial Acc. Comm.**, the plaintiff was covered by the Alaska Compensation Law and was injured in Alaska. He had been employed in California. He applied for compensation under the California Compensation Law in California and this Court held that he could properly invoke the California Workmen's Compensation Law. This case is certainly not contrary to the holdings of the District Court and the Court of Appeals. It is recognized that Crider could have invoked the Alabama Workmen's Compensation Law in the DeKalb County Circuit Court. Petitioner recognized this. When the suit was first filed in the Circuit Court of DeKalb County, Alabama, Crider based his case on the Alabama Workmen's Compensation Law (R. 8-9; Exhibit A of Appendix A). In the **Alaska Packers Asso. Case** the workman did not seek to invoke the Alaska Law in the California Court. It should also be pointed out that this Court speaking through Mr.

Justice Stone made it plain that "we assume, as did the State Court, that the remedy provided in the Alaska statute is one which could also be applied by the California Courts, except for the conflict". The **Alaska Packers Asso. Case** sheds no light on the case at bar.

The case of **Pacific Employers Ins. Co. v. Industrial Acc. Comm.**, cited by the Petitioner, simply holds that the California Commission could apply the California Act to the claim of a Massachusetts employee against a Massachusetts employer for an injury suffered in California in the course of his employment. This case has no application to the principle involved in the case at bar.

In the case of **Carroll v. Lanza**, *supra*, cited by the Petitioner, the plaintiff, a resident of Missouri, was injured while working in Arkansas. He came under the Missouri Workmen's Compensation Act and received payments under that Act. While he was still receiving payments under the Missouri Act he brought this common law action in Arkansas. The Missouri Act provided that the rights and remedies granted by it shall exclude all other rights and remedies at common law or otherwise. The Supreme Court ruled that the Missouri statute was not a bar to the Arkansas common law remedy. So what has this got to do with the case at bar? If Petitioner Crider had brought a common law action in this state for injuries after he had previously received compensation from Georgia then apparently this case would have been controlling but needless to say this is not the situation here. As pointed out in the **Carroll Case** the full faith and credit clause does not require a state to substitute for its own statute applicable to persons and events within it the statute of another state reflecting the conflicting and opposing policy.

Petitioner's emphasis on **Pearson v. Northeast Airlines, Inc.**, 309 F. 2d 553 (2nd Cir. 1962), is strange and mis-

guided. Petitioner mistakes defense for a remedy—for an entire procedure. Petitioner was injured in Alabama. He first chose the Alabama law, the law of the place of injury. He abandoned the Alabama law. He chose then to try to come under the Georgia law. The Georgia law is administered by the State Workmen's Compensation Board. Even the Georgia Courts cannot administer the Georgia Act, let alone the Alabama courts. Petitioner's saying there is a conflict between the Court of Appeals for the Second and the Fifth Circuits does not make a conflict. There is no conflict and no basis for the grant of the writ.

It is quite clear that we would have a different situation if the Georgia Workmen's Compensation Act was administered by the Georgia Courts. The Georgia Act is administered by a State Board of Workmen's Compensation. The Alabama Workmen's Compensation Act is administered by the courts of the State of Alabama. As was said by the District Court to permit this original action in the Courts of Alabama to enforce a claim under the Georgia Workmen's Compensation Law is to allow an original proceeding in such courts where the same is denied to the Courts of Georgia.

Petitioner invoked the Alabama Workmen's Compensation Law. See his original complaint (R. 8-9; Exhibit A of Appendix A). The DeKalb County Circuit Court of Alabama would have had jurisdiction to apply the Workmen's Compensation Law of Alabama. Strangely the Petitioner decided to cast that aside and travel under the Georgia Workmen's Compensation Law.[10] The Alabama

[10] Compensation benefit under the Georgia Law (Ga. Code, Title 114, Sec. 404) was limited to $10,000. Benefits under the Alabama Workmen's Compensation Law would have amounted to $11,200. 1940 Ala. Code, Title 26, Sec. 279 (e) 3 and Sec. 280 (400 weeks at the rate of $28.00 per week).

Court did not have jurisdiction to make an award under the Georgia Workmen's Compensation Law. Its judgment is void for that reason.

II.

**A Party or His Privies Will Be Permitted to Attack a Judgment Collaterally Where the Judgment Is Void for Want of Jurisdiction of the Court Over the Subject Matter.**

The DeKalb County Circuit Court did not have jurisdiction of the subject matter. Therefore, the issue of jurisdiction is subject to inquiry. Judgments of courts can be impeached for jurisdictional defects disclosed on the face of the record. Where the record discloses a lack of jurisdiction the judgment is void. **City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 607; **Murphy v. L. & N.**, 258 Ala. 138, 61 So. 2d 3; **Crump v. Knight**, 256 Ala. 601, 56 So. 2d 625; **Freeman v. McBroom**, 11 Ala. 943.

It clearly appears on the face of the record that in the DeKalb County Circuit Court in which the judgment was obtained the judgment was rendered under the Workmen's Compensation Law of the State of Georgia. In fact, the complaint claims under the Workmen's Compensation Law of the State of Georgia and proof was made to the court under the Workmen's Compensation Law of the State of Georgia. The judgment was void for want of jurisdiction of the DeKalb County Circuit Court. Therefore, the judgment could be assailed in the District Court.

A party or his privies may assail such a judgment. **Fife v. Pioneer Lumber Co.**, 237 Ala. 92, 185 So. 759; **Cobbs v. Norville**, 227 Ala. 621, 151 So. 576.

Jurisdiction of a court over the subject matter is at all times open to inquiry either on appeal or when the judgment rendered is collaterally attacked and no consent, laches or solicitation of the parties can cure such defect.

**City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 607.

The Alabama Court in the case of **Murphy v. L. & N.**, 258 Ala. 138, 61 So. 2d 3, held:

> "Where the court is without jurisdiction of the res, the subject matter, * * * it is without jurisdiction as a matter of law and its finding is not *res judicata*."

And in the case of **Crump v. Knight**, 256 Ala. 601, 56 So. 2d 625, the Court held that "Courts acting without authority can impart no validity to their proceedings and their judgments are assailable in any proceedings."

It is axiomatic that the judgment of the Circuit Court of DeKalb County is void and could be attacked in this case. The Alabama Court in the case of **Woolf v. McGaugh**, 175 Ala. 299, 57 So. 754, quoting with approval the statement from **Freeman v. McBroom**, 11 Ala. 943, had this to say:

> "* * * It has frequently been held, in suits at law, that when the court has no jurisdiction of the subject matter in dispute, such want of jurisdiction cannot be waived by appearance, plea, consent, or in any other manner, and a judgment rendered in such case in favor of the plaintiff will be void."

## III.

### When a Judgment of a State Court Comes Under Consideration in a Court of the United States the Question of Jurisdiction of the State Court to Render the Judgment Is Open to Inquiry in the United States Court.[11]

In a suit in a United States Court on a judgment of a court of one of the states, full faith and credit requires

[11] Cooper v. Newell, 173 U. S. 555, 19 S. Ct. 506, 43 L. Ed. 808; Tilt v. Kelsey, 207 U. S. 43, 28 S. Ct. 1, 52 L. Ed. 95.

the enforcement of the judgment and prevents it from being collaterally attacked unless it is shown that the judgment was entered without jurisdiction. **People of State of New York ex rel. Halvey v. Halvey,**[12] 330 U. S. 610, 67 S. Ct. 903, 91 L. Ed. 1133; **Griffin v. Griffin,** 327 U. S. 220, 66 S. Ct. 556, 90 L. Ed. 635; **Adam v. Saenger,** 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649; **Merrell et al. v. United States et al.,** 140 F. 2d 602 (10th Cir. 1944).

The Court of Appeals' judgment was not in error in denying "full faith and credit" to the **void judgment** of the Circuit Court of DeKalb County, Alabama.

## CONCLUSION.

There are no special and important reasons for the granting of the writ. This case does not involve a state court decision on a federal question of substance. Nor is the decision of the Court of Appeals of the Fifth Circuit of which the Petitioner seeks a review in conflict with a decision of another court of appeals on this matter. The judgment of the Court of Appeals does not decide a new question of federal importance and its decision is not in conflict with the applicable decisions of this Court. In truth, Petitioner would have this Court depart from its time honored decisions set out above and give validity to a **void judgment** rendered by an Alabama state trial court.

The United States Court of Appeals for the Fifth Circuit,[13] the District Court for the Northern District of Alabama,[14] the Supreme Court of Alabama,[15] and the Circuit

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[12] "If the court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the Full Faith and Credit Clause."

[13] Crider v. Zurich Insurance Company, 324 F. 2d 499; Green v. J. A. Jones Construction Company, supra.

[14] Crider v. Zurich Insurance Company, 224 F. Supp. 87.

[15] Singleton v. Hope Engineering Company, supra.

Court of Jefferson County, Alabama[16] have all correctly applied the law of the case. The Alabama courts have no jurisdiction of a claim for benefits under the Board administered Georgia Workmen's Compensation Law.

If (and what a big "if" it is) Alabama was free to make a choice of conflict of laws Petitioner's contention in this regard is still without merit. The Alabama Supreme Court has already made a choice of laws, which choice leaves the Petitioner dangling on the end of his big "if."

The petition for certiorari is not supported by sound "reason" and it is respectfully submitted that the petition should be denied.

FRANK E. SPAIN,
First National Building,
Birmingham, Alabama,
Attorney for Respondent

Of Counsel:

FOSTER ETHEREDGE,
SPAIN, GILLON & YOUNG,
First National Building,
Birmingham, Alabama.

**Proof of Service.**

I, Frank E. Spain, one of the attorneys for Zurich Insurance Company, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of March, 1964, I served copies of the foregoing Response to Petition for a Writ of Certiorari to the United States Court of Appeals for the

[16] Crider v. Zurich Insurance Company; See Appendix A, Order of Court wherein Circuit Court overruled Crider's demurrer to Zurich's pleas.

Fifth Circuit on the Petitioner by depositing the same in a United States Post Office with first-class postage prepaid, addressed to J. Terry Huffstutler, counsel of record for the Petitioner, at his Post Office address, First National Building, Birmingham 3, Alabama.

.....

Frank E. Spain,
First National Building,
Birmingham 3, Alabama,
Attorney for Zurich Insurance Company.

## APPENDIX A.

Case of Thomas J. Crider v. Zurich Insurance Company.

In the
Circuit Court of Jefferson County, Alabama.

### Complaint.

Thomas J. Crider,
Plaintiff,
vs.
Zurich Insurance Company, a Corporation,
Defendant.
} No. 48637-X.

**Count 1:**

Plaintiff claims of the defendant the sum of Ten Thousand Five Hundred Dollars ($10,500.00) together with interest at the rate of six percent (6%) per annum from February 11, 1959, for that plaintiff obtained a judgment in the Circuit Court of the Ninth Judicial Circuit of Alabama at Fort Payne, Alabama, on February 11, 1959, for the amount of Ten Thousand Five Hundred Dollars ($10,500.00) together with costs of court in the amount of One Hundred Dollars ($100.00) against his employer, A. H. Lawler Construction Company, a corporation, for injuries received by the plaintiff on July 11, 1956, while performing duties for his employer within the line and scope of his employment in DeKalb County, Alabama, and plaintiff avers that the defendant Zurich Insurance Company was the insurer of the said A. H. Lawler Construction Company, Inc., a corporation, for liability on workmen's compensation and for the injuries and damages

which plaintiff sustained on said occasion. And plaintiff avers that, under the said contract of insurance existing on said occasion between the defendant and the said A. H. Lawler Construction Company, Inc., a corporation, the defendant agreed that it could be sued by any person who had secured a judgment such as the one obtained by plaintiff against the said insured, A. H. Lawler Construction Company, Inc., a corporation.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

ZURICH'S PLEA AND ANSWER.

Comes the defendant and for plea and answer to the Complaint filed in this cause, and to each count thereof, separately and severally, and sets down and assigns, separately and severally, the following separate and several pleas:

Plea One: Not guilty.

Plea Two: The allegations of said count are untrue.

Plea Three: That the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the Judgment described in said Complaint and the Judgment is null and void.

Plea Four: Defendant avers that the Judgment described in plaintiff's Complaint was rendered by the Circuit Court of DeKalb County, Alabama, in Case No. 590. A true and correct copy of the portion of the record in said case, namely, the Complaint as Last Amended, and the Judgment of Court Awarding Compensation, is attached hereto, marked "Exhibit A" and "Exhibit B," respectively, and made a part hereof as if fully set out herein

at this point. Defendant further says that at all times mentioned in said Complaint and on the date of the said Judgment, it was the applicable law of the State of Georgia as contained in the Workmen's Compensation Law of that State, Title 114, Chapter 114-706, Georgia Code, Acts of the Georgia Legislature of 1920, page 197; 1937, pages 7 and 43; 1945, page 462; 1956, pages 725 and 726, that:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Com

plaint was rendered, and the Judgment is null and void. Therefore, the Defendant says the plaintiff should not recover of the defendant.

Plea Five: For purposes of this Plea, defendant adopts all of the averments of Plea Four down to and including the words "most convenient for a hearing" and in lieu of the averments following the said quoted words, says as follows: Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature, 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered and the Judgment is null and void. Therefore, the Defendant says that the Plaintiff should not recover.

Plea Six: Defendant avers that at all times mentioned in said Complaint and on the date of said Judgment it was the law of the State of Georgia, as contained in the Workmen's Compensation Law of that State, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature of

1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter, except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

For the purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter of the Complaint as Last Amended for that the sole method of claiming compensation under the Georgia Workmen's Compensation Act is by the filing of a claim with the Georgia State Board of Workmen's Compensation within one year from the date of the accident, and defendant avers that the plaintiff did not file a claim with the Georgia State Board of Workmen's Compensation within one year after the accident described in the Complaint as Last Amended. Hence, the Judgment of the Circuit Court of DeKalb County, Alabama, is null and void and the plaintiff should not recover.

Plea Seven: For purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says as follows: That at all times mentioned in said Complaint and on the date of said Judgment it was the applicable law of the State of Georgia as contained in the Workmen's Compensation Law of that State, Title 114,

Chapter 114-411, Georgia Code, Acts of the Georgia Legislature of 1920, page 187, that:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State; Provided, his contract of employment was not expressly for service exclusively outside of the State."

Defendant says that the accident described in said Complaint happened in the State of Alabama while the plaintiff, who was a resident of the State of Alabama, was employed in the State of Alabama. Defendant says further that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made in the State of Alabama. Defendant says that the plaintiff was not entitled to compensation under the laws of the State of Georgia, and defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction to award the plaintiff compensation under the law of the State of Georgia, and that the Judgment of said Court is void.

Plea Eight: For purposes of this Plea defendant adopts the first paragraph of Plea Four. Defendant says that the statutes and laws of the State of Georgia were not pleaded by the plaintiff in the Complaint as Last Amended, and defendant says that the Circuit Court of DeKalb County, Alabama, had jurisdiction only to apply the common law of the State of Alabama as being one and the same as the State of Georgia. Therefore the defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction to award compensation under the Workmen's

Compensation Law of the State of Georgia, and not having jurisdiction of the subject matter of the suit the Judgment is void.

Plea Nine: For purposes of this Plea defendant adopts the first paragraph of Plea Four, and defendant says as follows: Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Title 114, Chapter 114-411, Georgia Code:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State."

Title 114, Chapter 114-706, Georgia Code:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached

such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that only the State Board of Workmen's Compensation of the State of Georgia had jurisdiction to award the plaintiff workmen's compensation under the Workmen's Compensation Law of the State of Georgia, and that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered. Therefore, the Judgment is void and the plaintiff should not recover.

Plea Ten: For purposes of this Plea, defendant adopts all of the averments of Plea Nine down to and including the quoted words "be the most convenient for a hearing" and in lieu of the averments following the said

quoted words, says as follows: Defendant says that it issued to A. H. Lawler Construction Company a Workmen's Compensation Policy, No. 68-820, and a true and correct copy of said policy is attached hereto and marked "Exhibit C" and made a part hereof as if fully set out herein at this point. Defendant says that Item 3 of the Insuring Agreement of said policy provides that Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia, and defendant says that its policy did not apply to the Compensation Law of the State of Alabama, and defendant further says that the coverage afforded by its said policy did not apply to the accident described in plaintiff's Complaint.

Plea Eleven: For purposes of this Plea, defendant adopts all of the averments of Plea Ten down to and including the words "Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia", and defendant says as follows: The accident described in plaintiff's Complaint happened in the State of Alabama. The contract of employment was made in the State of Alabama, and the residence of the plaintiff Crider was in the State of Alabama. Defendant further says that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made expressly for service exclusively outside of the State of Georgia. The plaintiff was not entitled to compensation under the laws of the State of Georgia. Hence, the coverage afforded by defendant's said policy of insurance did not apply to the accident described in plaintiff's Complaint, and the plaintiff should not recover.

Plea Twelve: Defendant says that in its policy of insurance sued on, it is provided as follows:

> "If claim is made or suit or other proceeding is brought against the insured, the insured shall imme-

diately forward to the company every demand, notice, summons or other process received by him or his representative."

The policy provides further that:

"No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, * * *."

Defendant says that the insured named in the policy, A. H. Lawler Construction Company, did not immediately forward to the Company every demand, notice, summons or other process received by it or its representative. Defendant says that it did not receive any notice of the plaintiff's suit in the Circuit Court of DeKalb County, Alabama. Therefore, defendant says that the plaintiff cannot recover.

Plea Thirteen: For the purposes of this Plea, defendant adopts all of the averments of paragraph one of Plea Four. Defendant says that plaintiff, on February 10, 1959, filed his amended complaint, which was an entirely new and different cause of action from that averred in the original complaint, a copy of which is attached hereto and marked "Exhibit D", and made a part hereof as if fully set out herein at this point, and that the Circuit Court of DeKalb County, Alabama, on February 11, 1959, rendered its Judgment of Court Awarding Compensation upon said Complaint as Last Amended, and defendant further says that the Complaint as Last Amended was never served upon A. H. Lawler Construction Company. Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction over the person of A. H. Lawler Construction Company, and the Judgment of that Court described in plaintiff's Complaint is void.

/s/ Spain, Gillon & Young.
Attorneys for Zurich Insurance Company

EXHIBIT A TO ZURICH'S PLEA AND ANSWER.

Complaint.

In the Circuit Court of DeKalb County, Alabama.

Thomas J. Crider, Plaintiff,
vs.
A. H. Lawler Construction Company, Inc., a Corporation, Defendant.
No. 590.

**Count 1:**

Plaintiff claims of the defendant benefits under the Workmen's Compensation Laws of Alabama due and owing under the following statement of facts: On July 11, 1956, the relation of employer and employee, or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a foreign corporation, doing business in Alabama, and plaintiff; and defendant and plaintiff were subject to the Workmen's Compensation Laws of Alabama; and, while so employed and engaged in the business of the defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally disabled. A controvery has arisen as to the benefits to be paid under the Workmen's Compensation Laws of Alabama.

Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defendant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice of said accident but that the said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the Workmen's Compensation Laws of Alabama.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than Forty Dollars ($40.00) a week. Plaintiff further avers that he is totally disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

Wherefore, plaintiff claims of the defendant such benefits as he is entitled to receive under the Workmen's Compensation Laws of Alabama. He prays that notice may

be given the defendant and that hearing may be had, all in accordance with the laws and rules of this Honorable Court.

**Count 2:**

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that heretofore, on, to-wit, July 11, 1956, the defendant was engaged in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and the plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack E. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant, and then and there the said Mack E. Walker, while acting within the line and scope of his employment as a servant, agent or employee of the defendant, allowed or caused the A-frame and blade of the said bulldozer to fall upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and atten-

tion in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused as a proximate consequence of the negligence of Mack B. Walker, the servant, agent or employee of the defendant, while acting within the line and scope of his employment, in allowing or causing the said A-frame and blade of the said bulldozer to fall upon plaintiff at the time and place and on the occasion aforesaid.

**Count 3:**

Plaintiff claims of the defendant the sum of One Hundred Fifty Thousand Dollars ($150,000.00) as damages for that, heretofore, on, to-wit, July 11, 1956, the defendant was working in the construction of dirt roads at or near Valley Head, DeKalb County, Alabama, and that plaintiff avers that, at said time and place, he was a casual employee of the defendant. And plaintiff avers that, while he was acting within the line and scope of his employment as such casual employee of the defendant, he was assisting another employee of defendant, namely, Mack B. Walker, who was then and there acting within the line and scope of his said employment, to repair a bulldozer belonging to the defendant. And plaintiff avers that, while he was thus employed and was underneath the said bulldozer assisting to make said repairs, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured and damaged as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and

shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was otherwise injured; he was permanently injured; and plaintiff was put to much trouble, annoyance, inconvenience and great expense in and about procuring doctors and medicines, medical aid and attention in an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused by reason of the defects in the condition of the said bulldozer and that the defendant knew of the defects existing in said bulldozer prior to the date plaintiff was injured.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

Plaintiff demands a jury trial.

/s/ J. Terry Huffstutler,
Attorney for Plaintiff.

**Amended Complaint.**

Now comes the plaintiff and, with leave of the Court first had and obtained, amends his complaint heretofore filed in this cause as follows:

1. By adding the following count:

**Count A**: Plaintiff claims of the defendant benefits under the workmen's compensation laws of Georgia due and owing under the following statement of facts:

On July 11, 1956, the relation of employer and employee or master and servant, existed between defendant, A. H. Lawler Construction Company, Inc., a Georgia corporation,

doing business in Alabama; and plaintiff and defendant were subject to the workmen's compensation laws of Georgia; and, while so employed and engaged in the business of defendant, and while acting within the line and scope of his employment with said defendant, plaintiff suffered an accident, which arose out of and in the course of said employment. As a proximate result of said accident, plaintiff has been totally and permanently disabled. A controversy has arisen as to the benefits to be paid under the workmen's compensation laws of Georgia. Plaintiff's name is Thomas J. Crider, and he resides at Valley Head, Alabama. The defendant's name is A. H. Lawler Construction Company, Inc., a foreign corporation, whose address is Perry, Georgia.

At the time of the said accident, on, to-wit, July 11, 1956, plaintiff was assisting another employee of defendant in the repair of a bulldozer belonging to defendant, at or near Valley Head, DeKalb County, Alabama, and, while plaintiff was thus engaged in assisting in said repairs of said bulldozer, the A-frame and blade of the said bulldozer fell upon plaintiff and, as a proximate consequence thereof, plaintiff was injured as follows: his back was broken; he was internally injured; his abdomen was injured; his ribs and side were injured; the muscles and ligaments in his back were sprained, strained, torn, twisted and otherwise injured; his nervous system was shocked and impaired; his whole physical being was shaken and shocked; he was made sick and sore and he was caused to suffer excruciating physical pain and anguish; he was confined to a hospital for a long period of time for the treatment of his injuries; he was permanently injured; and he suffered numerous other injuries.

Plaintiff avers that defendant, A. H. Lawler Construction Company, Inc., had prompt and immediate notice

of said accident but that said defendant has failed or refused to pay any of the medical or hospital expenses of plaintiff, and said defendant has not paid plaintiff any benefits whatsoever under the workmen's compensation laws of Georgia.

Plaintiff avers that, at the time of the said injuries, he was receiving wages in the sum of not less than $40.00 a week. Plaintiff further avers that he is totally and permanently disabled and that, as a proximate result, he has not been able to work since the date of said injuries to the present date.

Wherefore, plaintiff claims of the defendant such benefits as he is entitled to receive under the workmen's compensation laws of Georgia.

2. By striking Counts 1, 2 and 3 of the complaint heretofore filed in this cause.

3. By waiving the demand for a jury trial.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

EXHIBIT B TO ZURICH'S PLEA AND ANSWER.

**Judgment of Court Awarding Compensation.**

This day came the plaintiff, Thomas J. Crider with his attorney, J. Terry Huffstutler; and the defendant, A. H. Lawler Construction Company, Inc., a corporation, failing to appear (the Court having granted the request of the withdrawal as attorney for the defendant made by Hon. W. M. Beck and the Court further being satisfied that defendant was notified of the withdrawal of representation by Hon. W. M. Beck); and after hearing the evidence on the amended complaint of plaintiff, the Court is of the

opinion that the plaintiff is totally and permanently disabled as a result of the injuries sustained while acting within the line and scope of his employment for the defendant, and it is the judgment of the Court, that compensation be and the same is hereby awarded to the plaintiff in the sum of Ten Thousand Dollars ($10,000.00) and the further sum of Five Hundred Dollars ($500.00) for medical expenses.

It is, therefore, considered, ordered and adjudged by the Court that the plaintiff have and recover from the defendant the said sum of Ten Thousand Five Hundred Dollars ($10,500.00) in one lump sum, together with costs in this behalf expended, for all of which execution may issue.

It is further considered and ordered by the Court, and it is the judgment of the Court, that the attorney's fee of J. Terry Huffstutler, for the plaintiff, be and the same is hereby fixed at Three Thousand Five Hundred Dollars ($3,500.00).

The foregoing order and judgment entered this 11 day of February, 1959.

/s/ W. J. Haralson,
Circuit Judge.

**Crider's Demurrer to Pleas of Defendant.**

Comes the plaintiff and demurs to defendant's special pleas three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, and for grounds of demurrer assigns separately and severally, the following:

1. Said pleas present an immaterial issue.

2. Said pleas confess the averments of the complaint but do not set up a sufficient defense to avoid said averments.

3. For that the averments contained in said pleas are conclusions of the defendant and do not state facts constituting defenses.

4. For that said pleas contain no averments that remove the judgment obtained in the Circuit Court of DeKalb County from the rule as to the conclusiveness of judgments rendered by Courts of competent jurisdiction in all kinds of judicial proceedings.

5. For that said pleas fail to make sufficient averments under the applicable law of this State to remove the judgment rendered by the Circuit Court of DeKalb County from the doctrine of res judicata.

6. For that said pleas fail to sufficiently aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment is conclusive as to all facts or issues decided therein and binds not only those who were parties to the litigation but also persons who are in privity with them.

7. For that said pleas fail to sufficiently aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment on the merits rendered in a former suit between the same parties or their privies upon the same cause of action, by a court of competent jurisdiction, is conclusive, not only as to all matters determined, but also is conclusive as to any matter which might or ought to have been litigated.

/s/ J. Terry Huffstutler,
/s/ J. Terry Huffstutler,
Attorney for Plaintiff.

**Crider's Amended Demurrer to Pleas of Defendant.**

Comes the plaintiff and with leave of the Court first had and obtained amends its demurrer heretofore filed to the pleas of the defendant and separately and severally assigns the following separate and several grounds:

8. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a bald conclusion of the pleader.

9. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is an unauthorized conclusion of the pleader.

10. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a conclusion of law not authorized by any of the pleadings filed in this instant case.

11. Said plea 3 is insufficient in that it does not undertake to allege, state, or outline the facts on which the conclusion is made that the court had no jurisdiction to render the judgment described in said complaint.

12. Aught appearing to the contrary the trial court rendering said judgment had jurisdiction of said matter under the principles of comity obtaining in this state.

13. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Alabama.

14. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Georgia.

15. The mere union of substantive rights and procedural matters under the laws of the State of Georgia will not preclude the enforcement of the judgment secured by the plaintiff; it appearing that the foreign procedural provisions are not inseparably connected with substantive rights in order to preserve the integrity of such rights.

16. It affirmatively appearing that the defendant in the instant case was not a party to case No. 590 heretofore rendered by the Circuit Court of DeKalb County, Alabama, the defendant in the instant case cannot proceed in this cause under said plea 3, or plea 4, in that this defendant Zurich Insurance Company, a corporation, was not a party to said case No. 590.

17. Said plea 4, and the allegations therein constitute a collateral attack on the said judgment.

18. For that it affirmatively appears that the allegations in said pleas separately and severally, except plea 1 are not direct attacks on said judgment but are collateral attacks.

19. Each of said pleas, separately and severally, are deficient in that the defendant in case No. 590, in which A. H. Lawler Construction Company, Inc., a corporation, was the defendant and the only defendant is not joined as a party plaintiff or a party defendant in the instant case.

20. It appearing that the defendant in the instant case, No. 48637-X in this court and A. H. Lawler Construction Company, Inc., a corporation, were in privity one with the other at the time of the accident complained of and at the time of the employment of the plaintiff by the defendant or its authorized servants or agents, said judgment rendered in case 590 cannot be attacked by them separately.

21. Each of said pleas, except the plea of the general issue, seek to stop the enforcement of the judgment sued

on and are defective in that all parties to the judgment and all parties who will be directly affected if said judgment be declared void or set aside, are indispensable parties to the suit to set aside the said judgment.

22. Said judgment herein sued on is "res judicata" upon the employer and its privy, Zurich Insurance Company, a corporation, and the defendant in this case, and said judgment is therefore not subject to collateral attack.

23. For that it appears that said judgment herein sued on stands unreversed and is binding res judicata upon the parties thereto and their privies, including the defendant in the case at bar.

24. For that it affirmatively appears that the said judgment sued on cannot be collaterally attacked by the defendant in this case, since the facts pleaded show that the defendant in this instant case was in privity with the defendant in the case wherein the judgment sued on was rendered.

25. For that it appears that the judgment sued on was rendered in a court that had the right to decide as to its own jurisdiction and that its decision in favor of that jurisdiction, has the same effect and conclusiveness as its decision in any other matter and cannot be attacked collaterally.

/s/ J. Terry Huffstutler.
J. Terry Huffstutler,
Attorney for Plaintiff.

ORDERS OF COURT.

7-14-61: Demurrer to each of defendant's pleas is hereby overruled and this case is set for further pleading on August 16th, 1961 at 10:00 A. M. /s/ Ingram Beasley, Judge.

11-20-61: Plaintiff amends demurrer to defendant's pleas by adding grounds 8 through 25. /s/ Ingram Beasley, Judge.

2-16-62: Demurrer as last amended to defendant's pleas 5 through 13 is hereby overruled and this case is continued to Mar. 9th, 1962 at 11:00 A. M. for further pleading. /s/ Ingram Beasley, Judge.

3-13-63: Dismissed on motion of plaintiff without prejudice and all costs taxed against plaintiff. /s/ Ingram Beasley, Judge.

I, Julian Swift, Clerk of the Circuit Court, Tenth Judicial Circuit of the State of Alabama in and for the County of Jefferson do hereby certify the foregoing to be a true and correct copy of the court orders in this case. Recorded in Minute Book 277, page 211.

Witness my hand and seal this the 2nd day of March, 1964.

/s/ Julian Swift,
Clerk, Circuit Court.

(Seal)

## APPENDIX B.

### Workmen's Compensation Law of Alabama, Code of Alabama, Tit. 26, Sec. 297.

§ 297. (7571) **Controversy submitted to circuit court; jury trial; appeal, etc.**—A. **Controversy submitted to circuit court.** In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court, such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court may hear and determine such controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this article provided for. B. **Jury trial.** When wilful misconduct on the part of the employee is set up by the employer, as it is provided for herein, the employer may, upon appearing, demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues, by filing his demand within five days after the appearance of the employer. When a jury is demanded by either party, the court must submit the issues of fact as to wilful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual

powers of the court over verdicts rendered contrary to the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense, the employer must serve a copy of the plea or answer, setting up the defense, upon the employee or his attorney of record. C. **Court always open.** For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under articles 1 and 2 of this chapter, the circuit court shall be deemed always in session. D. **Adverse claimants.** If at any time there are adverse claimants to compensation hereunder, the employer in submitting said claim to said circuit court may suggest in writing said claimants and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge, shall be released from the claims of any other claimants thereto. E. **Appeal by certiorari.** From such decree any aggrieved party may by certiorari within thirty days thereafter appeal to the supreme court or the court of appeals of Alabama. (1919,

## APPENDIX C.

### Workmen's Compensation Law of Georgia
### Ga. Code Ann., Chapter 114.

**114-103. Other remedies excluded by this law.**—The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury loss of service or death. (Acts 1920, p. 176.)

**114-305. Time of filing claim.**—The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply. (Acts 1920, p. 181; 1925, pp. 282, 284; 1931, pp. 7, 43.)

**114-705. Agreements as to compensation, filing of.**—If, after 14 days from the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If

approved by the Board, thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified. (Acts 1920, p. 196; 1931, pp. 7, 43.)

**114.706. Hearings regarding disagreements.**—If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing. If either party in the matter of disagreement scheduled for a hearing desires to take evidence in any county of this State other than the county of the original accident and injury, or the county of the employee's residence, as the case may be, they may do so by making application either to the Board or the hearing member of said issues in dispute, and if in the discretion of the Board or the hearing member it is deemed that the evidence is material

and necessary to a fair and just adjudication of said issue or issues. The Board or hearing member shall have authority to continue said hearings for the purpose of taking said evidence in any other county of this State, and shall either schedule the hearing for the taking of said evidence in any county of the State of Georgia, or shall direct that the evidence be taken by deposition under the rules now required for taking depositions in civil cases of this State: Provided that if the Board or member directs the parties to take evidence by deposition, the party or parties taking said depositions shall forward the same to the secretary and treasury of the State Board of Workmen's Compensation in the same manner as depositions are filed with the clerks of the superior courts in other cases. If either party at issue desires to take the testimony of witnesses without the State the Board or the member may authorize any officer or employee of the authority charged with administering the workmen's compensation laws of the State where such testimony is to be taken to act as commissioner for the taking of the same, or it may direct the taking of such testimony under the same rules now pertaining to the taking of testimony of persons without the State in civil cases. After notice of a hearing has been given by the Board, either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, under the same requirements now provided for the taking of depositions upon oral examinations or written interrogatories in civil cases in the superior court. (Acts 1920, p. 197; 1931, pp. 7, 43; 1945, p. 462; 1956, pp. 725, 726.)

Office-Supreme Court, U.S.
FILED
AUG 17 1964
JOHN F. DAVIS, CLERK

# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1964**

## No. 116

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THOMAS J. CRIDER,

*Petitioner,*

*vs.*

ZURICH INSURANCE COMPANY,

*Respondent.*

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## PETITIONER'S BRIEF ON THE MERITS

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J. TERRY HUFFSTUTLER
First National Building
Birmingham, Alabama
*Counsel for Petitioner*

*Of Counsel:*

MAX C. POPE
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# INDEX

## Subject Index


| | Page |
|---|---|
| Petitioner's Brief | 1 |
| Opinions | 1 |
| Jurisdiction | 1 |
| Constitutional and statutory provisions involved | 2 |
| Questions presented | 2 |
| Statement of the case | 3 |
| Summary of Argument | 4 |
| I. The Alabama court is free to enforce the Georgia Compensation Act, and the enforcement does not violate the United States Constitution | 5 |
| II. Each state is free to adopt such rules of conflict of law or choice of laws as it chooses so long as the rules do not violate the United States Constitution | 12 |
| III. The Court of Appeals denied to the Alabama Court the right to determine what aspects of the Georgia Compensation Act were matter of procedure and what were substantive matters | 19 |
| IV. The Court of Appeals was in error in denying full faith and credit to the *judgment* of the Circuit Court of DeKalb County, Alabama | 23 |
| Conclusion | 25 |
| Appendix A: | |
| Constitutional and Statutory Provisions Involved | 27 |

## Cases Cited


| | Page |
|---|---|
| *Alaska Packers Asso.* v. *Industrial Acci. Comm.*, 294 U.S. 532 (1935) | 4, 5, 6, 9, 16, 22, 24, 25, 26 |
| *Babcock* v. *Jackson*, 191 N.E. 2d 279 (1963) | 21, 22 |
| *Carroll* v. *Lanza*, 349 U.S. 408 (1954) | 4, 7, 8, 9, 15, 17, 18, 22, 25, 26 |
| *Cooper* v. *Newell*, 173 U.S. 555 (1898) | 23 |
| *Dollahite-Levy Co.* v. *Overton*, 233 Ala. 12, 133 So. 903 (1931) | 19 |
| *Erie R.R. Co.* v. *Thompkins*, 303 U.S. 498 (1953) | 14 |
| *Galveston, H. & S. A. R. Co.* v. *Wallace*, 223 U.S. 481 (1911) | 12 |
| *Green* v. *J. A. Jones Constr. Co.* (C.C.A. 5, 1947), 161 F. 2d 359 | 6, 7, 13, 14, 17, 24 |
| *Griffin* v. *McCoach*, 313 U.S. 498 (1941) | 14 |
| *Kenny* v. *Loyal Order of Moose*, 252 U.S. 410 (1920) | 14 |
| *Kilberg* v. *Northeast Airlines, Inc.*, 9 N.Y. 2d 34, 172 N.E. 2d 526 (1961) | 20 |
| *Moran* v. *Pittsburg-Des Moines Steel Co.* (C.C.A. 3, 1948), 166 F. 2d 908 | 19, 20 |
| *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, 306 U.S. 493 (1938) | 4, 5, 6, 9, 13, 14, 15, 22, 23, 24, 25, 26 |
| *Pearson* v. *Northeast Airlines, Inc.*, 309 F. 2d 553 (1962) | 16, 18, 19, 20, 21, 22, 26 |
| *Pritchard* v. *Norton*, 106 U.S. 124 (1882) | 19 |
| *Richards* v. *U. S.*, 369 U.S. 1 (1962) | 15 |
| *T. C. I.* v. *George*, 233 U.S. 354 (1914) | 11 |
| *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) | 12, 13, 15, 18, 19 |


## Statutes Cited


| | |
|---|---|
| *Alabama Code*, Tit. 7, Sec. 97 | 9 |
| *Alabama Code*, Tit. 26, Sec. 297 | 10 |
| *Alabama Code*, Tit. 49, Sec. 17 (14) | 9 |
| *Georgia Code*, 114-103 | 6, 8, 14, 15 |
| *Georgia Code*, 114-404 | 17 |

Page

*Georgia Code*, 114-411 ..... 10
*Georgia Code*, 114-705 ..... 10
*Georgia Code*, 114-706 ..... 11, 12, 18
*Missouri Revised Statutes*, Sec. 287, 120 (2) ..... 8
28 U.S.C., Sec. 1254 (1) ..... 1
28 U. S. C., Sec. 1332 ..... 3
28 U. S. C., Sec. 1738 ..... 23

## Constitutions Cited

*Alabama Constitution*, Article VI, Sec. 143 ..... 11
*United States Constitution*, Fourth Article, Sec. 1 .... 23

## Periodical Cited

6 *Alabama Law Review* 84 (1953) ..... 14

# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1964**

## No. 116

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THOMAS J. CRIDER,

*Petitioner,*

*vs.*

ZURICH INSURANCE COMPANY,

*Respondent.*

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## PETITIONER'S BRIEF ON THE MERITS

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### Opinions Below

The *judgment* of the Circuit Court of DeKalb County, Alabama (R. 13-14; Resp. Ex. B); the order and opinion of the District Court (R. 23-25, 224 F. Supp. 87); and the opinion of the Fifth Circuit Court of Appeals (R. 28; 324 F. 2d 499).

### Jurisdiction

The opinion and judgment (R. 28; 324 F. 2d 499) of the Fifth Circuit Court of Appeals was entered on November 21, 1963. The jurisdiction of this Court is invoked under 28 U.S.C.A., Sec. 1254 (1), and said Court granted Petitioner a writ of certiorari on May 25, 1964 (R. 30).

## Constitutional and Statutory Provisions Involved

In accordance with Rule 40 (1) (c) of the Supreme Court Rules and due to length of the constitutional and statutory provisions involved in this case, said provisions are set out verbatim in Appendix A of this Brief.

## Questions Presented

### Circumstances of the Case

Petitioner was awarded a *judgment* in the Circuit Court of DeKalb County, Alabama, based on the Georgia Workmen's Compensation Act (R. 13-14; Resp. Ex. B), and sought to enforce the *judgment* in the United States District Court for the Northern District of Alabama. Petitioner's complaint was dismissed (R. 23-25; 224 F. Supp. 87), and the United States Court of Appeals for the Fifth Circuit affirmed the District Court (R. 28; 325 F. 2d 499).

### The Questions

1. Was the Alabama Court free to enforce the Georgia Compensation Act so long as the enforcement did not violate the United States Constitution?

2. Does the decision of the Court below deny to the State of Alabama the freedom to adopt such rules governing conflict of laws as it chooses?

3. Does the Court of Appeals deny to the State of Alabama the right to determine what aspects of a foreign statute were merely matters of procedure, and what were substantive matters?

4. Was the Court of Appeals' judgment in error in denying Full Faith and Credit to the *judgment* of the Circuit Court of DeKalb County, Alabama?

## Statement of the Case

Petitioner filed a suit against A. H. Lawler Construction Company, Inc., a corporation, in the Circuit Court of DeKalb County, Alabama, to recover for injuries sustained in the State of Alabama (R. 15-18; Resp. Exs. A & B). The Respondent had issued a workmen's compensation insurance policy to A. H. Lawler Construction Company, Inc. The Honorable W. M. Beck made a special appearance as attorney for Lawler Construction Company and/or Respondent, but was later permitted to withdraw from the case (R. 13-14; Resp. Ex. B). On February 1, 1959, Petitioner was awarded a *judgment* by the Circuit Court of DeKalb County, Alabama, and said *judgment* was based on the Georgia Workmen's Compensation Law (R. 13-14; Resp. Ex. B). Petitioner filed a complaint in the United States District Court for the Northern District of Alabama, on March 14, 1963 (R. 3-5) to compel the Respondent to satisfy said *judgment*.

Jurisdiction of the United States District Court was invoked under 28 U.S.C.A., Sec. 1332, due to Petitioner being a citizen of the State of Alabama; the Respondent being a corporation organized and existing under the laws of Switzerland and the State of Illinois having its principal place of business in Chicago, Illinois, and the amount in controversy, other than interest and cost, exceeded Ten Thousand and No/100 Dollars ($10,000.00) (R. 3).

Respondent filed a motion to dismiss (R. 6-21), and Petitioner filed an alternative motion for judgment on the pleadings or summary judgment (R. 22-23).

The District Court, by its judgment dated May 16, 1963, granted Respondent's motion to dismiss (R. 23-25; 224 F. Supp. 87). A timely notice of appeal was filed on June 5, 1963 (R. 26). The Fifth Circuit Court of Appeals affirmed the decision of the District Court on November 21, 1963 (R. 28; 324 F. 2d 499), and this Court granted Petitioner a writ of certiorari May 25, 1964 (R. 30).

## Summary of Argument

Summarized, Petitioner's argument is:

1. Petitioner sought damages in a Circuit Court in Alabama, the State of his residence and the situs of his injury, under the Georgia Compensation Act. Weighing the governmental interests of the State of Alabama,[1] the Alabama Court rendered *judgment* for Petitioner under the Georgia Compensation Act. The enforcement of said Act and of the *judgment* rendered thereunder did not violate the Full Faith and Credit clause.

2. The Alabama Court was free to adopt such choice of laws as it saw fit, even to the point of qualifying or denying to either party the rights arising from the Georgia Compensation Act, so long as the denial or qualification did not violate the United States Constitution.

3. The Alabama Court had the right to determine that the *permissive* provision in the Georgia Compensation Act permitting a hearing before the Georgia Board was purely

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[1] The following decisions of this Court authorized the Alabama Court to accord Petitioner his damages under the Georgia Compensation Act: *Alaska Packers Asso.* v. *Industrial Acci. Comm.*, 294 U.S. 532, 79 L. Ed. 1044 (1935); *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, 306 U.S. 493, 83 L. Ed. 940 (1938); *Carroll* v. *Lanza*, 349 U.S. 408, 99 L. Ed. 1183 (1954).

a matter of procedure and was not a part of the substantive law of Georgia.

4. While Georgia can create a substantive cause of action and limit its enforcement *in Georgia* to procedure prescribed, it cannot thereby deprive Alabama courts of the jurisdiction given them by the Alabama Constitution to enforce the substantive transitory cause of action created by Georgia.

5. The *judgment* rendered by the Alabama Circuit Court based on the Georgia Compensation Act could not be denied enforcement merely because the Georgia courts could not enforce the Act in an original action.

Original jurisdiction of the Alabama court was determined by the Alabama Constitution that created it and not the Georgia Act that created Petitioner's cause of action.

The Alabama court had original jurisdiction over Petitioner's cause of action and the *judgment* rendered thereby was to be accorded Full Faith and Credit.

## I.

### The Alabama Court Is Free to Enforce the Georgia Compensation Act, and the Enforcement Does Not Violate the United States Constitution.

The Supreme Court in *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra,* and in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra,* was confronted with the problem whether the forum state should use its own compensation act or the compensation act of a sister state.

The Court in *Alaska Packers Asso.* v. *Industrial Acci. Comm.,* said:

"... the *compensation acts* or *either jurisdiction* may consistently with due process, be *applied in either* [State] . . . " 294 U.S. 532, at p. 544. (Emphasis supplied.)

And in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, this Court said:

"... *either state* . . . would *be free to adopt and enforce the remedy provided by* the *statute of the other* [State] . . . " 306 U.S. 493, at p. 500. (Emphasis supplied.)

The DeKalb County Circuit Court did enforce the Georgia Compensation Act just as this Court said it may do and awarded Petitioner a *judgment* (R. 13-14; Resp. Ex. B). In the light of the foregoing decisions how could the Court of Appeals hold, as it did, that the Alabama Court could not enforce the Georgia Act?

The Court of Appeals stated it was controlled in this case by its decision in *Green* v. *J. A. Jones Construction Company*, 161 F. 2d 359 (1947), where a Federal District Court sitting in Mississippi was affirmed for dismissing a complaint seeking recovery under the Georgia Compensation Act. In deciding the *Green* case, the court relied on Chapter 114-103, *Georgia Code*, which provides as follows:

"The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death."

However, the Supreme Court in *Carroll* v. *Lanza, supra,* repudiated this reasoning. A similar "exclusive" section of Missouri's Compensation Act was claimed to be a bar to a common-law action in Arkansas, but the Court said:

> "... the *Pacific Employers Insurance Company* case teaches, she [forum state] may *supplement* it [foreign compensation act] or *displace* it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within its border. We *do not* think the *Full Faith and Credit clause* demands that subserviency from the State of the injury." 349 U.S. 408, at p. 414. (Emphasis supplied.)

Since the Court of Appeals in *Green, supra,* and here (324 F. 2d 499), said a sister state (Alabama) was bound by this "exclusive" section of the foreign (Georgia) compensation act, and the Supreme Court in *Carroll* v. *Lanza,* said the sister state (Arkansas) *was not* bound by the "exclusive" section of the Missouri Compensation Act, Petitioner now sets out each "exclusive" section for this Court to compare:

The Supreme Court in *Carroll* v. *Lanza* said this Missouri "exclusive" statute did not prevent the Missouri Compensation Act from being *displaced* or *supplemented* in Arkansas. The statute says:

The Court of Appeals said this Georgia "exclusive" statute precluded Petitioner's *judgment* from being enforced, and precluded plaintiff's cause of action in *Green.* The statute says:

"The rights and remedies herein granted to an employee shall exclude all other rights and remedies of such employee, his wife, her husband, parents, personal representatives, dependents, heirs or next of kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter." Sec. 287, 120 (2), *Missouri Revised Statutes* (1959).

"The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code.*

*What is the difference?* What is there about these statutes that permits the Court of Appeals to reach a different conclusion from the Supreme Court?

Further, the Court in *Carroll* v. *Lanza,* said:

> "Missouri [Georgia] can make her compensation act *exclusive* if she chooses, and *enforce* it as she pleases *within her borders.* Once that *policy* is *extended to other states, different considerations come into play.*" 349 U.S. 408, at p. 413. (Emphasis supplied.)

What are those "different considerations" that permit the sister state (Alabama) to disregard the entire foreign compensation act, or "supplement" it?

The "different considerations" of the State of Alabama are:

1. Petitioner was injured in the State of Alabama. (R. 4, 11-21; Resp. Exs. A & B.)

2. Petitioner was and still is a resident of the State of Alabama. (R. 3-5, 11-15; Resp. Exs. A & B.)

3. Petitioner's employer was doing business in the State of Alabama. (R. 4, 11-15; Resp. Exs. A & B.)

4. The State of Alabama has an interest in protecting employees working within its borders and especially resident employees. (See *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra; Pacific Employers Co.* v. *Industrial Acci. Comm., supra; Carroll* v. *Lanza, supra.*)

5. As a totally disabled indigent, Petitioner is subject to support under the Public Welfare Laws of the State of Alabama. (See *Alabama Code,* Tit. 49, Sec. 17 (14) (1940) (Recomp. 1958).)

6. The Legislature of Alabama has enacted a statute making it mandatory for the Alabama courts to enforce foreign created causes of action.[2]

As against these overwhelming Alabama "considerations," the only Georgia connection with this case was the fact that Petitioner was entitled to damages under the Georgia Compensation Act for his injuries.[3]

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[2] The statute provides:

"Whenever, either by common law or statutes of another state, a cause of action, either upon contract, or in tort, has arisen, in such other state against any person or corporation, the *cause of action shall be enforced within the courts of this state,* in any county in which jurisdiction of the defendant can be legally obtained if the cause of action had arisen in this state." *Alabama Code,* Tit. 7, Sec. 97 (1940) (Recomp. 1958). (Emphasis supplied.)

[3] "Where an accident happened while the employee is employed elsewhere than in this State, which would entitle him or his

Once the Circuit Court in Alabama weighed the foregoing "considerations" or governmental interests of Alabama, the Circuit Court in Alabama had no choice but to award Petitioner the damages to which he was entitled under the Georgia Compensation Act.

The only "supplement" it made to the Georgia Compensation Act was to give Petitioner a hearing[4] of his disputed[5] claim for his injuries before an Alabama Circuit

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dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title." Chapter 114-411, *Georgia Code*.

[4] The Compensation Act of Alabama provides: "In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter . . . *either party may submit the controversy to the Circuit Court of the county which would have jurisdiction of a civil case in tort between the parties . . .*" Tit. 26, Sec. 297, *Alabama Code* (1940) (Recomp. 1958). (Emphasis supplied.)

[5] Petitioner's claim must have been disputed because Chapter 114-705, *Georgia Code*, provides as follows as to an agreement regarding Petitioner's claim for his injuries:

"If after 14 days from the date of injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form described by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If approved by the Board thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified."

Court rather than before Georgia's State Board of Workmen's Compensation. The Georgia Compensation Act provides for a permissive hearing before the Board in the following language:

> "If the employer and the injured employee . . . fail to reach an agreement in regard to compensation under this Title . . . either party *may* make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon . . . " Chapter 114-706, *Georgia Code*. (Emphasis supplied.)

Respondent argues that the "exclusive" section and the implication of Chapter 114-706, *Georgia Code*, deprives the Circuit Courts of Alabama of jurisdiction over claims arising from the Georgia Compensation Act (R. 6-10); but the statutes enacted by the Georgia legislature cannot determine the jurisdiction of the Alabama courts. In *T. C. I.* v. *George*, 233 U.S. 354, 58 L. Ed. 997 (1914), this Court said:

> ". . . *jurisdiction* is to be *determined by* the *law* of the *courts' creation*[6] and *cannot be defeated* by the *extra-territorial operation* of a *statute of another state*, even though it created the right of action." 233 U.S. 354, at p. 360. (Emphasis supplied.)

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[6] The *Alabama Constitution* created the Circuit Courts and does not deny original jurisdiction to the Circuit Courts on any claim unless it is less than fifty dollars. The provision of the *Alabama Constitution* specifying the Circuit Court's jurisdiction says:

> "The Circuit Court shall have original jurisdiction in all matters civil and criminal within the state not otherwise excepted in this Constitution; but in civil cases other than suit for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter of sum in controversy exceed fifty dollars. *Alabama Constitution* Article VI, Sec. 143.

We are confronted with the "naked question" whether the forum state (Alabama) violated the Full Faith and Credit clause, when it provided Petitioner a hearing before a Circuit Court in Alabama, to enforce his just claim for his injuries; thereby displacing or disregarding the implication[7] of Chapter 114-706, of the *Georgia Code*, which provides that an employee "may make application" for a hearing before the Board in Georgia.

The Alabama Circuit Court weighed the "considerations" of the State of Alabama, and "turning the scale of decision according to their weight", it had no choice but to award Petitioner his damages. In doing so, it did not violate the Full Faith and Credit clause.

The *judgment* was rendered in accordance with the decisions of this Court, and without any constitutional rights being denied to Respondent. The *judgment* should have been enforced by the Court of Appeals for the Fifth Circuit.

## II.

**Each State Is Free to Adopt Such Rules of Conflict of Law or Choice of Laws as It Chooses So Long as the Rules Do Not Violate the United States Constitution.**

This Court has repeatedly held that each state was free to adopt such rules of conflict of laws or choice of laws it may choose. The Supreme Court in *Wells v. Simonds Abrasive Company*, 345 U.S. 514, 97 L. Ed. 1213 (1953), said:

> "The states are free to adopt such rules of conflict of laws as they choose, *Kryger* v. *Wilson*, 242 U.S. 171, 61 L. Ed. 229, 37 S. Ct. 34 (1916), subject to the Full Faith and Credit Clause and other constitutional re-

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[7] This Court in *Galveston, H. & S. A. R. Co.* v. *Wallace*, 223 U.S. 481, 56 L. Ed. 516 (1911), said: "... But jurisdiction is not defeated by implication ..." 223 U.S. 481, at p. 489.

strictions. The Full Faith and Credit Clause does not compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister state." 345 U.S. 514, at p. 516.

In the case of *Pacific Employers Insurance Co.* v. *Industrial Acci. Comm., supra,* the Court said:

"... and the law of neither [State] can by its own force determine the choice of law to be applied in the other [State]." 306 U.S. 493, at p. 500.

There was a conflict of laws or choice of laws problem in Alabama when the DeKalb County Circuit Court was asked to enforce the Georgia Compensation Act. The Court of Appeals, by its judgment, denied to Alabama the right to adopt such rules of conflict of laws as it chooses. Instead, it permitted the law of Georgia to determine the choice of laws in Alabama.

The *Green* case, *supra,* which the Court of Appeals said controlled its decision, was an original action in the United States District Court in Mississippi. Petitioner's suit here is on a *judgment* in a Federal District Court in Alabama which was rendered by an Alabama Circuit Court.

The Court in the *Green* case stated:

"... *The Georgia decisions* [*Grice* v. *United States Fid. & Guaranty Co.*, 187 Ga. 259, 200 S. E. 700; *Blue Bell Globe Mfg. Co.* v. *Baird*, 64 Ga. App. 347, 13 S. E. 2d 105; *Echols* v. *Chattanooga Merc. Co.*, Ga. App., 38 S. E. 2d 675] settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's

Compensation in a proceeding brought before it as the statute provides (Sec. 114-103)." (Emphasis supplied.)

Neither the "Georgia decisions" nor the Georgia statute[8] can settle the issue arising from Petitioner's suit on his *judgment*[9] even though both may be controlling in Georgia or Mississippi.

This Court in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra* said:

". . . the full faith and credit clause does not require one state to substitute . . . the conflicting statute of another state, *even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events.*" 306 U.S. 493, at p. 502. (Emphasis supplied.)

The United States District Court in Mississippi uses the conflict of laws or choice of laws of Mississippi.[10] The conflict of laws or choice of laws of Mississippi must have been

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[8] "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept any pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code*.

[9] This Court in *Kenny* v. *Loyal Order of Moose*, 252 U.S. 410, 64 L. Ed. 638 (1920), when it was confronted with enforcing a *judgment*, said:

". . . Therefore the fact that here the original cause of action could not have been maintained in Illinois [Georgia or Mississippi] *is not an answer to a suit upon* the *judgment*." 252 U.S. 410, at p. 415. (Emphasis supplied.)

[10] *Erie R.R. Co.* v. *Thompkins*, 304 U.S. 64, 82 L. Ed. 1188 (1938); *Griffin* v. *McCoach*, 303 U.S. 498, 85 L. Ed. 1481 (1941); 6 *Ala. L. Rev.* 84 (1953).

to look to the foreign law (Georgia Law) for both substantive and procedural matters.

No matter what the conflict of laws or choice of laws may be in Mississippi, it *cannot* dictate to Alabama what its conflict of laws or choice of laws should be.[11]

Nevertheless, the Court of Appeals, by its decision, has permitted the conflict of laws or choice of laws of Mississippi to designate the conflict of laws in Alabama. Further, it has permitted Mississippi to determine what effect Alabama has to accord to the "exclusive" statute of Georgia (*Georgia Code*, 114-103).

In fact, the Georgia Compensation Act (Sec. 114-103), the court referred to in the *Green* case as making the Georgia Act "exclusive" has no enforceability as a defense to any state except Georgia *unless* the sister (forum) state *desires to recognize* it as a defense, as the Mississippi Court did in *Green*.

The Supreme Court in *Carroll* v. *Lanza, supra,* said:

> "Missouri can make her Compensation Act exclusive if she chooses, and *enforce it as she pleases within her borders*. Once that policy is extended to other States, different considerations come into play." 349 U.S. 408, at p. 413. (Emphasis supplied.)

If it were the policy of Mississippi to give the "exclusive" effect to the Georgia Act, it was *not* the policy of Alabama to recognize the "exclusive" effect in this case, and the Alabama court was not compelled to do so by the United States Constitution.

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[11] *Pacific Employers Insurance Company* v. *Industrial Acci. Comm., supra; Wells* v. *Simonds Abrasive Company, supra; Richards* v. *U. S.*, 369 U.S. 1, 7 L. Ed. 2d 492 (1962).

To what extent, extraterritorially, may a provision in a statute of a state govern sister forum states? This question has been thoroughly explored and answered by the United States Court of Appeals for the Second Circuit in *Pearson* v. *Northeast Airlines, Inc.*, 309 F. 2d 553 (1962). There, plaintiff's action in New York was based on Massachusetts law, and the New York court disregarded the limitations on damages Massachusetts placed on the cause of action.

Writing for the majority, Judge Kaufman said:

> ". . . But we cannot concede that Massachusetts has a constitutionally protected claim to the unqualified application of its statute in cases with an overwhelmingly interstate flavor. The adoption of such a principle would effect an incursion by Massachusetts upon the public policy of New York far more serious than the purported incursion upon Massachusetts policy which we have upheld today. If Massachusetts local rules must, by constitutional compulsion, govern every aspect of a transaction so intimately affecting the interest of New York, then the concept of full faith and credit is being utilized as an extraordinary example of oppressiveness to legitimate and lawful state interests." 309 F. 2d 553, at p. 561.

Referring to *Alaska Packers Asso.* v. *Industrial Acci. Comm.*, *supra*, the Second Circuit also noted ". . . In that case [*Alaska Packers*] the Court expressly recognized that *rights asserted under* the *statute* of *one state may* necessarily *be denied* or *qualified* by the law of another." 309 F. 2d 553, at p. 560. (Emphasis supplied.)

In Petitioner's case the only qualification the forum state (Alabama) has made to the Georgia Compensation Act was to afford Petitioner a hearing before a Circuit Court rather than before a Board in Georgia.

The DeKalb County Circuit Court found from the evidence presented that Petitioner was "totally and permanently disabled" (R. 13-14; Resp. Ex. B). When an employee covered by the Georgia Compensation Act is "totally and permanently disabled," the Act has a section[12] dealing expressly with total disability payments which any intelligent person can compute; and the DeKalb County Circuit Court did not exceed the Ten Thousand Dollar ($10,000.00) limitation (R. 13-14; Resp. Ex. B) imposed by this section. What detriment has Respondent suffered by Petitioner being accorded a hearing in a Circuit Court in Alabama?

Respondent may argue that *Carroll* v. *Lanza* stands for one proposition alone; that a foreign compensation act would not bar a common-law action in a sister state. But this Court in *Carroll* v. *Lanza* said:

> "For we *write not only this case* and this case alone *but for this type of case.*" 349 U.S. 408, at p. 413. (Emphasis supplied.)

Petitioner's case is the *same* "type" case as *Carroll* v. *Lanza,* in which the compensation act was asserted as a defense. Here, and in *Green,* Petitioner sought affirmative relief under the Georgia Compensation Act, and the Court of Appeals has used the "exclusive" word of the Georgia Act as a "talismanic" word to deny Petitioner his just and

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[12] "When the incapacity to work resulting from an injury is total, the employer shall pay or cause to be paid, as hereinafter provided for, to the employees during such total incapacity a weekly compensation equal to 60 per cent of his average wages, but not more than $30.00 per week, nor less than $10.00 per week, except when the weekly wage is below $10.00 then the regular wages on the date of the accident shall be the weekly amount paid, and in no case shall the period covered by such compensation be greater than 400 weeks nor shall the total amount of compensation exceed $10,000.00." Chapter 114-404, *Georgia Code.*

due recovery under the Georgia Compensation Act. Stated another way: the procedural aspect of the Act is *now* raised as a defense to Petitioner's *judgment*.

Did not the words in *Carroll* v. *Lanza* authorize the DeKalb County Circuit Court to "supplement" the Georgia Compensation Act by using its own procedure (the court action) when the Supreme Court said:

> "...the *Pacific Employers Ins. Co.* case teaches, she [forum state] may *supplement* it [foreign compensation act] or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within her border . . ." 349 U.S. 408, at p. 414. (Emphasis supplied.)

The Court in *Pearson*, in disregarding the limitation of damages in the Massachusetts cause of action, stated that the Supreme Court had held that the forum state could ignore the statute of limitations in a foreign cause of action,[13] and the court stated there was no constitutional distinction between a statute of limitations and dollar limitations. How it can be argued here that the forum state (Alabama) could not ignore the *permissive* provisions[14] of the Georgia Compensation Act concerning a hearing before the Georgia Board rather than the Court in Alabama. When it is constitutional to "displace" the entire foreign compensation act or "supplement" it;[15] ignore the

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[13] *Wells* v. *Simonds Abrasive Co.*, *supra*.

[14] Chapter 114-706, *Georgia Code*.

[15] *Carroll* v. *Lanza*, *supra*.

statute of limitations;[16] and disregard the dollar limitation of a foreign cause of action;[17] then what is unconstitutional about the Alabama court's action in this case?

## III.

**The Court of Appeals Denied to the Alabama Court the Right to Determine What Aspects of the Georgia Compensation Act Were Matters of Procedure and What Were Substantive Matters.**

It has long been the rule of this Court and the Alabama courts[18] that matters of procedure are governed by the local law or law of the forum while the substantive matters are governed by the foreign law.

In 1882 the Supreme Court in *Pritchard* v. *Norton*, 106 U.S. 124, 27 L. Ed. 104, said:

> "... a civilized State ... adheres to its own system of formal judicial procedure and remedies. And ... the law of the procedure and remedy, ... *must be* domestic and *local*. In respect to the latter, the foreign law is rejected; but how and where to draw the line of precise classification is not always easy to determine." 106 U.S. 124, at p. 129. (Emphasis supplied.)

The state of the forum, Alabama in this case, determines "where to draw the line of precise classification."

In *Moran* v. *Pittsburg-Des Moines Steel Co.*, 166 F. 2d 908 (3rd Cir., 1948), cert. den. 334 U.S. 846, 92 L. Ed. 1770, the court said:

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[16] *Wells* v. *Simonds Abrasive Co.*, *supra*.

[17] *Pearson* v. *Northeast Airlines, Inc.*, *supra*.

[18] *Dollahite-Levy Company* v. *Overton*, 233 Ala. 12, 133 So. 903 (1931).

"... Likewise ... the application of ... conflict of laws determining whether a given question is to be characterized as substantive ... or procedural ... the law of the forum, controls ..." 166 F. 2d 908, at p. 910.

In *Kilberg* v. *Northeast Airlines, Inc.*, 9 N.Y. 2d 34, 172 N.E. 2d 526 (1961), the New York Court of Appeals was concerned with a death case filed in a New York court and arising out of the same air disaster involved in the *Pearson* case. The crash causing death occurred in Massachusetts whose law contained a limitation on the amount of damages in death actions. Recognizing the significant interests of New York in such causes of action, it was held proper for the New York forum to disregard the Massachusetts damage limitation. The court recognized the questions as procedural rather than substantive and applied the New York law in fixing the amount of damages recoverable,[19] saying:

"Some of the *older* Federal cases ... give defendants the benefit of limitations of damages found in the law of the place of wrong, regardless of where the actions were brought. Those cases, however, are not binding on us and *do not bring into play* the *full faith* and *credit* clause of the Constitution, Art. 4, Sec. 1 (see *Wells* v. *Simonds Abrasive Company*, 345 U.S. 514, 73 S. Ct. 856, 97 L. Ed. 1211)." 172 N.E. 2d 526, at p. 529. (Emphasis supplied.)

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[19] Judge Kaufman seemed to disagree with determinant of substantive versus procedural and said:

"... This [disregarding certain provisions of a foreign statute] is usually accomplished by referring to the statute of limitations as involving mere 'procedure' and not 'substantive'. The niceties of such legal legerdemain do not concern us; it is the result that speaks loudly." 309 F. 2d 553, at p. 558.

It was not a violation of the Full Faith and Credit clause for the Alabama Court to determine that the Georgia Compensation Act's permissive requirement that Petitioner file his claim before the Board in Georgia was merely procedural. Furthermore, Petitioner's *judgment* was not subject to collateral attack.

Respondent argued below that the procedure and right are so closely related that the Alabama court could not enforce Petitioner's claim for damages; or that the forum (Alabama) had to recognize the *permissive* provision for a Board hearing in Georgia.

In answer to Respondent's argument, the court in *Pearson* said:

> "We are *directed to no precedent*, and are unaware of any compelling logic independent of precedent, *which requires a state to enforce* such *statutory qualifications whenever* it *chooses to recognize a foreign-based cause of action* . . ." 309 F. 2d 553, at p. 558. (Emphasis supplied.)

Further the courts in *Pearson*, *supra*, and in *Babcock* v. *Jackson*,[20] 12 N.Y. 2d 473, 191 N.E. 2d 279 (1963) said, that to give any weight to this argument, the courts would have to recognize the relics of the vested rights theory which has long been discredited.

Judge Fuld in *Babcock* said, in regard to the vested rights theory:

> ". . . 'The vice of the vested rights theory,' it has been aptly stated, 'is that it affects to decide concrete cases upon generalities which do not state the practical considerations involved' . . . More particularly, . . . the

[20] The accident occurred in Ontario, and the Ontario law was alleged; however, the court of the forum (New York) held it was proper to ignore the defense of the Ontario guest statute.

> theory ignores the interest which jurisdictions other than that where the tort occurred may have in the resolution of particular issues." 191 N.E. 2d 279, at p. 281.

The same logic was expressed by this Court in *Carroll* v. *Lanza, supra*:

> "Missouri can make her Compensation Act exclusive if she chooses, and enforce it as she pleases within her borders. Once that policy is extended to other States, different considerations come into play." 349 U.S. 408, at p. 413.

After weighing the "different considerations" in this case, the Alabama Court—not the Court of Appeals—determined the effect it would accord to the various provisions of the Georgia Act. The *judgment* it rendered in accordance therewith should be enforced.

If the forum state (Alabama) is prohibited from determining what aspects of a foreign statute are procedural and substantive, then the state of the forum (Alabama) would also be prohibited from providing protection for its citizens injured within its borders and who may become public charges. See *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra;* and *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra.*

If the decision of the Court of Appeals for the Fifth Circuit here and in *Green* is to stand, then, as Judge Kaufman said in *Pearson*:

> "... it is the first decision of 'freeze' into constitutional mandate a choice-of-law rule derived from what may be described as the Ice Age of conflict of laws jurisprudence—at a time when that jurisprudence is in an advanced stage of thaw ..." 309 F. 2d 553, at p. 557.

## IV.

**The Court of Appeals Was in Error in Denying Full Faith and Credit to the Judgment of the Circuit Court of DeKalb County, Alabama.**

In *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm.*, *supra*, the Supreme Court said:

> "... either state ... would be *free* to *adopt* and *enforce* the *remedy provided* by the *statute* of the *other* [state] ..." 306 U.S. 493, at p. 500. (Emphasis supplied.)

And in *Cooper* v. *Newell*, 173 U.S. 555, 43 L. Ed. 808 (1898), this Court said:

> "... courts of the United States are bound to give to the judgments of the state courts the same faith and credit that the courts of one state are bound to give to the judgments of the courts of her sister states." 173 U.S. 555, at p. 567.

Petitioner's *judgment* awarded by the DeKalb County Circuit Court should be accorded Full Faith and Credit[21] by this Court and is not subject to collateral attack once this Court said the court of the forum (Alabama) could *adopt* and *enforce* the Georgia Compensation Act.

The DeKalb County Circuit Court was also confronted with a Full Faith and Credit problem when it was asked to enforce the Georgia Compensation Act. The Supreme

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[21] See 28 U.S.C.A., Sec. 1738; Article 4, Sec. 1 of the United States Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof."

Court in *Alaska Packers Assoc.* v. *Industrial Acci. Comm., supra,* said:

> "... rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, *but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.*" 294 U.S. 532, at p. 547. (Emphasis supplied.)

When the DeKalb County Circuit Court appraised the "governmental interests" of Alabama and Georgia, the "scale of decision" was balanced in favor of Alabama and Petitioner. Then the Circuit Court *adopted* and *enforced* the damages provided for in the Georgia Compensation Act just as the Supreme Court in *Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra,* said the court of the forum (Alabama) could do.

Once the Alabama Court had appraised the "governmental interests" of both states and rendered a *judgment* for Petitioner, then it was error for the Court of Appeals not to accord "Full Faith and Credit" to the *judgment.*

The court in the *Green* case, *supra,* which the Court of Appeals said controlled Petitioner's suit on his *judgment,* for all intents and purposes was a Mississippi Court (United States District Court in Mississippi). How can a Mississippi Court weigh the "governmental interests" of Alabama and Georgia? The *Alaska Packers* case said for the state confronted with the "Full Faith and Credit" problem to weigh the "governmental interests" and *not a third disinterested state.*

It is the State of Alabama that has the duty to prevent *its citizens* from becoming public charges and not the State of Mississippi or the State of Georgia.[22]

## Conclusion

For the reasons set out below it is respectfully submitted that this Court should reverse the order of the Court of Appeals for the Fifth Circuit.

Petitioner's *judgment* was not subject to collateral attack by the Court of Appeals. The Circuit Court of DeKalb County, Alabama, weighed the significant or "governmental interests" of the State of Alabama. Once the Circuit Court had weighed these interests and determined that the Alabama interest prevailed, then it was proper for the Circuit Court to qualify the *permissive* hearing provision of the Georgia Compensation Act and afford Petitioner a hearing in the Alabama Court.

The Court of Appeals erred in prohibiting the Alabama Court from enforcing the Georgia Compensation Act when it required the Alabama Court to use the conflict or choice of laws of Mississippi to weigh the "governmental interests" of Alabama in preventing its citizens from becoming public charges.

The Court of Appeals erred in not according Full Faith and Credit to Petitioner's *judgment* and permitting it to be collaterally attacked when said *judgment* was rendered in accordance with the reasoning of the decisions of this Court and without any constitutional rights denied to Respondent.

Granting an order by this Court reversing the decision of the Court of Appeals for the Fifth Circuit will delete

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[22] *Alaska Packers Assoc.* v. *Industrial Acci. Comm., supra; Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra; Carroll* v. *Lanza, supra.*

the inconsistency of the decisions of the Court of Appeals for the Second Circuit in *Pearson, supra,* and the decision of the Court of Appeals here.

Further such an order by this Court would align the decisions of the Court of Appeals for the Fifth Circuit with the Court's decisions in *Alaska Packers Asso.* v. *Industrial Acci. Comm., supra; Pacific Employers Ins. Co.* v. *Industrial Acci. Comm., supra; Carroll* v. *Lanza, supra.*

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## APPENDIX "A"

### Constitutional and Statutory Provisions Involved

The Fourth Article, Section 1, of the United States Constitution is involved:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Sixth Article, Section 143, of the Alabama Constitution is involved:

> "The Circuit Court shall have original jurisdiction in all matters civil and criminal within the state not otherwise excepted in this Constitution; but in civil cases, other than suit for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter of sum in controversy exceed fifty dollars."

The following Alabama Statutes are involved:

> "Whenever, either by common law or statutes of another state, cause of action, either upon contract, or in tort, has arisen, in such other state against any person or corporation, the cause of action shall be enforced within the Courts of this state, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state. *Alabama Code*, Tit. 7, Sec. 97 (1940) (Recomp. 1958).

> "*A. Controversy submitted to circuit court.* In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter, or the amount thereof,

either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court, such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court may hear and determine such controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this article provided for. *B. Jury Trial.* When wilful misconduct on the part of the employee is set up by the employer, as it is provided for herein, the employer may, upon appearing, demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues, by filing his demand within five days after the appearance of the employer. When a jury is demanded by either party, the court must submit the issues of fact as to wilful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual powers of the court over verdicts rendered contrary to the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense, the employer must serve a copy of the plea or answer, setting up the defense, upon the employee or his attorney of record. *C. Court always open.* For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under articles 1 and 2 of this chapter, the circuit court shall be deemed always in session. *D. Adverse claimants.* If at any time there are adverse claimants to compensation hereunder, the employer in submitting said claim to said circuit court may suggest in writing said claimants

and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge, shall be released from the claims of any other claimants thereto. *E. Appeal by certiorari.* From such decree any aggrieved party may by certiorari within thirty days thereafter appeal to the Supreme Court of the Court of Appeals of Alabama." *Alabama Code,* Tit. 26, Sec. 297 (1940) (Recomp. 1958).

The following Georgia Statutes are involved:

1. "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service or death." Chapter 114-103, *Georgia Code.*

2. "When the incapacity to work resulting from an injury is total, the employer shall pay or cause to be paid, as hereinafter provided for, to the employee during such total incapacity a weekly compensation equal to 60 per cent of his average wages, but not more than $30 per week nor less than $10 per week, except when the weekly wage is below $10.00, then the regular wages on the date of the accident shall be the weekly amount paid, and in no case shall the period covered by such compensation be greater than 400 weeks, nor shall the total amount of compensation exceed $10,000." Chapter 114-404, *Georgia Code.*

3. "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the em-

ployer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title." Chapter 114-411, *Georgia Code.*

4. "Whenever any weekly payment has been continued for not less than 26 weeks, the liability therefor may, when the State Board of Workmen's Compensation deem it to be to the best interest of the employee or his dependents, or where it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this law: Provided, that the lump sum to be paid shall be fixed at an amount, which will equal the total sum of the probable future payments, reduced to their present value upon the basis of interest calculated at five per cent per annum." Chapter 114-417, *Georgia Code.*

5. "If, after 14 days from the date of the injury, or at any time in case of death, the employer and the injured employee, or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If approved by the Board, thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified." Chapter 114-705, *Georgia Code.*

6. "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one of which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing. If either party in the matter of disagreement scheduled for a hearing desires to take evidence in any county of this State other than the county of the original accident and injury, of the county of the employee's residence, as the case may be, they may do so by making application either to the Board or the hearing member of said issues in dispute, and if in the discretion of the Board or the hearing member it is deemed that the evidence is material and necessary to a fair and just adjudication of said issue or issues. The Board or hearing member shall have authority to continue said hearings for the purpose of taking said evidence in any other county of this State, and shall either schedule the hearing for the taking of said evidence in any county of the State of Georgia, or shall direct that the evidence be taken by deposition under the rules now required for taking depositions in civil cases of this State: Provided that

if the Board or member directs the parties to take evidence by deposition, the party or parties taking said depositions shall forward the same to the secretary and treasury of the State Board of Workmen's Compensation in the same manner as depositions are filed with the clerks of the superior courts in other cases. If either party at issue desires to take the testimony of witnesses without the State the Board or the member may authorize any officer or employee of the authority charged with administering the workmen's compensation laws of the State where such testimony is to be taken to act as commissioner for the taking of the same, or it may direct the taking of such testimony under the same rules now pertaining to the taking of testimony of persons without the State in civil cases. After notice of a hearing has been given by the Board, either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, under the same requirements now provided for the taking of depositions upon oral examinations or written interrogatories in civil cases in the superior court." Chapter 114-706, *Georgia Code.*

The following Missouri Statute is involved:

"The rights and remedies herein granted to an employee, shall exclude all other rights and remedies of such employee, his wife, her husband, parents, personal representatives, dependents, heirs or next of kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are now provided for by this chapter." Sec. 287, 120 (2), *Missouri Revised Statutes* (1959).

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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964.

No. 116.

THOMAS J. CRIDER,
Petitioner,

vs.

ZURICH INSURANCE COMPANY,
Respondent.

## RESPONDENT'S BRIEF ON THE MERITS.

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## INDEX.


| | Page |
|---|---|
| Questions Presented | 1 |
| Circumstances of the case | 1 |
| The questions | 2 |
| Statement of the case | 3 |
| Summary of Argument | 5 |
| Argument | 6 |
| I. The selection by a forum state of rules of conflict of law which extend full faith and credit to the statute of a sister state should be sustained | 6 |
| II. Where the provision for the liability claimed is coupled with the provision for a special remedy to be afforded not by a court but by a commission, that remedy alone must be employed and resort to court action may not be had for relief | 17 |
| III. A party or his privies will be permitted to attack a judgment collaterally where the judgment is void for want of jurisdiction of the court over the subject matter | 25 |
| IV. When a judgment of a state court comes under consideration in a Court of the United States the question of jurisdiction of the state court to render the judgment is open to inquiry in the United States Court | 27 |
| Conclusion | 28 |
| Appendix A.—Proceedings in the Circuit Court of Jefferson County, Alabama | 31 |

Appendix B.—Workmen's Compensation Law of Alabama, Code of Alabama, Tit. 26, Secs. 297, 304 .... 46

Appendix C.—Workmen's Compensation Law of Georgia, Ga. Code Ann. Chapter 114 ..... 49

Appendix D.—Pertinent portions of the Workmen's Compensation Law of Georgia, Chapter 114, referred to in Section II of this brief ..... 52

**Cases Cited.**

Adam v. Saenger, 303 U. S. 59, 82 L. Ed. 649, 58 S. Ct. 454 ..... 27

Alaska Packers Asso. v. Industrial Acci. Com., 294 U. S. 532, 79 L. ed. 1044, 55 S. Ct. 518 .....6, 11, 12, 13

Blue Bell Globe Mfg. Co. v. Baird, 64 Ga. App. 347, 13 S. E. 2d 105 ..... 24

Carroll v. Lanza, 349 U. S. 408, 99 L. ed. 1183, 75 S. Ct. 804 .....6, 9, 11, 12, 13

City of Birmingham v. Reed, 35 Ala. App. 31, 44 So. 2d 607 ..... 26

Cobbs v. Norville, 227 Ala. 621, 151 So. 576 ..... 26

Cooper v. Newell, 173 U. S. 555, 43 L. Ed. 808, 19 S. Ct. 506 ..... 27

Crider v. Zurich Insurance Company, 224 F. Supp. 87 (N. D. Ala. 1963) ..... 2

Crider v. Zurich Insurance Company, 324 F. 2d 499 (5th Cir. 1963) ..... 2

Crump v. Knight, 256 Ala. 601, 56 So. 2d 625 .....26, 27

Davis v. Swift & Co., 175 Tenn. 210, 133 S. W. 2d 483 19

Douthwright v. Champlin, 91 Conn. 524, 100 A. 97 ... 19

Echols v. Chattanooga Mercantile Co. (Ga. App.), 38 S. E. 2d 675 ..... 24

Elliott v. DeSoto Crude Oil Purchasing Corporation, 20 F. Supp. 743 (W. D. La.) ..... 19

Fife v. Pioneer Lumber Co., 237 Ala. 92, 185 So. 759 .. 26
Freeman v. McBroom, 11 Ala. 943 ..... 26
Fresquez v. Farnsworth & Chambers Company, 238 F. 2d 709 (10th Cir. 1956) ..... 19

Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205 .....10, 18
Green v. J. A. Jones Const. Co., 161 F. 2d 359 (5th Cir. 1947) .....11, 13, 14, 16, 17, 19, 22, 23, 28
Grenier v. Alta Crest Farms (Ver.), 58 A. 2d 884 .... 19
Grice v. United States Fidelity & Guaranty Company, 187 Ga. 259, 200 S. E. 700 ..... 24
Griffin v. Griffin, 327 U. S. 220, 90 L. Ed. 635, 66 S. Ct. 556 ..... 27

Johnson v. Employers Liability Assur. Corporation, 99 S. W. 2d 979 ..... 19

Kilberg v. Northeast Airlines, Inc., 9 N. Y. 2d 34, 172 N. E. 2d 526 .....23, 24

Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 ..... 19

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 88 L. Ed. 149, 64 S. Ct. 208 ..... 10
Merrell v. United States, 140 F. 2d 602 (10th Cir., 1944) ..... 27
Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223 .....19, 20
Murphy v. Louisville & N. R. Co., 258 Ala. 138, 61 So. 2d 3 ..... 26

New York v. Halvey, 330 U. S. 610, 91 L. Ed. 1133, 67 S. Ct. 903 .....27, 28

Pacific Employers Ins. Co. v. Industrial Acci. Com., 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629 ....6, 11, 12, 13, 15
Pearson v. Northeast Airlines Inc., 309 F. 2d 553 (2nd Cir. 1962) .....22, 23, 24
Pollard v. Bailey, 20 Wall. 520, 527, 22 L. ed. 376 ...10, 18

Singleton v. Hope Engineering Co., 233 Ala. 538, 137 So. 441 ..... 7, 10, 11, 16, 19, 24, 28
Stewart v. Baltimore & Ohio R. Co., 168 U. S. 445, 42 L. Ed. 537, 18 S. Ct. 105 ..... 10, 18
Tennessee Coal, I & R Co. v. George, 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587 ..... 10, 18, 24
Tilt v. Kelsey, 207 U. S. 43, 52 L. Ed. 95, 28 S. Ct. 1 .. 27
Transcontinental & West. Air v. Koppal, 345 U. S. 653, 97 L. ed. 1325, 73 S. Ct. 906 ..... 21
Wells v. Simonds Abrasive Co., 345 U. S. 514, 97 L. ed. 1211, 73 S. Ct. 856 ..... 16, 17
Woolf v. McGaugh, 175 Ala. 299, 57 So. 754 ..... 27

**Statutes Cited.**

1940 Ala. Code, Title 26, Sec. 279 (e) 3 ..... 15
1940 Ala. Code, Title 26, Sec. 289 ..... 15
Ga. Code, Title 114, Workmen's Compensation ..... 8, 9, 15, 21, 24

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A. L. R., Restatement, Conflict of Laws, Sec. 618 .... 18
99 C. J. S., Workmen's Compensation, Section 22 .... 9
Larson's Workmen's Compensation Law, Sec. 84.20, page 356 ..... 19

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No. 116.

THOMAS J. CRIDER,
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vs.

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Respondent.

## RESPONDENT'S BRIEF ON THE MERITS.

### QUESTIONS PRESENTED.

#### Circumstances of the Case.

The primary issue is whether Crider, the Petitioner, can collect workman's compensation benefits under the board administered Georgia Workmen's Compensation Law in an Alabama court proceeding.

This issue arises out of a suit in the District Court on a void judgment rendered by an Alabama trial court.

Respondent moved to dismiss the case on the ground that the judgment was void in that the Alabama court did not have jurisdiction of the subject matter of the suit. The issue here was raised by the District Court below granting the Respondent's motion to dismiss (**Crider v. Zurich Insurance Company**, 224 F. Supp. 87 (N. D. Ala. 1963) (R. 23-25)), and the affirmance of the decision of the District Court by the Court of Appeals of the Fifth Circuit (**Crider v. Zurich Insurance Company**, 324 F. 2d 499 (5th Cir. 1963) (R. 28)).

## THE QUESTIONS.

1. Was the Alabama Supreme Court free to grant full faith and credit and adopt the construction of the Georgia Workmen's Compensation Act given said Act by the Courts of Georgia?

2. Is an Alabama trial court free to adopt its own rules of conflict of laws when such choice had previously been made by the Alabama Supreme Court?

3. Can Alabama enforce in its courts the administrative remedy prescribed by Georgia for enforcement of its Workmen's Compensation Act?

4. May a privy collaterally attack a judgment which is void for want of jurisdiction over the subject matter?

5. Does the Full Faith and Credit Clause prohibit a Court of the United States from permitting a state court judgment to be attacked collaterally for want of jurisdiction over the subject matter?

## STATEMENT OF THE CASE.

The Petitioner, plaintiff below, while an employee of Lawler Construction Company, Inc., a Georgia corporation, was injured on the 11th day of July, 1956, in DeKalb County, Alabama. Crider and Lawler were under and subject to the Workmen's Compensation Law of Georgia at the time Crider was injured. Both were under and subject to the Workmen's Compensation Law of Alabama. On the 3rd day of July, 1957, Crider instituted suit against Lawler in the Circuit Court of DeKalb County, Alabama, seeking recovery under three counts, the first count being under the Alabama Workmen's Compensation Law and counts two and three being under the common law (R. 15-18). Respondent, Zurich Insurance Company, was not a party to this suit.

On February 10, 1959, Crider amended his complaint striking all of the original counts and his demand for a jury trial and added Count A claiming under the Georgia Workmen's Compensation Law (R. 11-12). A default judgment was entered in the case on the 11th day of February, 1959, awarding compensation to Crider under the Workmen's Compensation Law of the State of Georgia (R. 13-14).

The respondent, Zurich Insurance Company, defendant below, was the workmen's compensation insurer of Lawler and as such was in privity with Lawler. On February 15, 1960, Crider filed a suit on the judgment against respondent in the Circuit Court of Jefferson County, Alabama (Appendix A), to which complaint respondent filed special pleas setting up the Georgia Workmen's Compensation statute and attacking the DeKalb County Circuit Court judgment as being void for lack of jurisdiction of the subject matter. Petitioner's demurrer to the pleas were overruled and on March 13, 1963, Petitioner dismissed this suit after the Alabama Circuit Court's adverse ruling on his demurrer to the respondent's pleas (Appendix A).

On March 14, 1963, Crider filed a Civil Action in the United States District Court for the Northern District of Alabama which was a suit on the judgment rendered by the DeKalb County Circuit Court on February 11, 1959 (R. 3-5). To the Petitioner's complaint respondent filed a motion to dismiss (R. 6-10). The District Court on May 16, 1963, granted respondent's motion to dismiss (R. 23-25). The Court of Appeals of the Fifth Circuit affirmed the judgment of the District Court on November 21, 1963 (R. 28).

Respondent would correct one misstatement on page 3 of Petitioner's Brief. Petitioner states that "The Honorable W. M. Beck made a special appearance as attorney for Lawler Construction Company and/or Respondent, but was later permitted to withdraw from the case (R. 13-14; Resp. Ex. B)." W. M. Beck did not appear for Respondent as Respondent was not then a party. W. M. Beck appeared only for the sole defendant, Lawler Construction Company, and withdrew his appearance before the default judgment was taken.

## SUMMARY OF ARGUMENT.

Summarized, Respondent's argument is:

1. Prior to the judgment of the DeKalb County Circuit Court the Supreme Court of Alabama had made its choice of rules of conflict of laws and had adopted the construction given the Georgia Workmen's Compensation Act by the courts of Georgia.

2. The DeKalb County Circuit Court was not free to make its own choice of rules of conflict of law but was bound to follow the holding of the Alabama Supreme Court.

3. The Full Faith and Credit Clause does not require a forum state in an action in the forum state under the Workmen's Compensation Act of another state to enforce the foreign Act when such Act provides for its enforcement by an administrative board. The right and remedy of the foreign state are so united that they cannot be separated by the forum state.

4. The Alabama trial court judgment was erroneous as the trial court failed to follow the holding of the Alabama Supreme Court. The Alabama trial court judgment was void as the court had no jurisdiction over the subject matter of the Georgia Workmen's Compensation Act for the cause of action given by that Act could only be enforced by the Georgia Board of Workmen's Compensation.

5. The Respondent as the Workmen's Compensation insurer of the defendant against whom the void judgment was rendered was privy to the defendant employer and had standing in a suit on the judgment to attack collaterally the judgment as being void for want of jurisdiction of the subject matter. A Court of the United States will permit a collateral attack on the jurisdiction of a state court when the state court judgment is sued on in the United States Court.

## ARGUMENT.

### I.

### The Selection by a Forum State of Rules of Conflict of Law Which Extend Full Faith and Credit to the Statute of a Sister State Should Be Sustained.

Petitioner has charted his course to persuade this Court that this case is another in a line of cases in which this Court has been asked to review the action of a state court in a Workmen's Compensation Action where there is claimed error in the forum state's consideration of an exclusive remedy provision in the compensation act of a sister state. Petitioner employs twisted logic, incomplete quotations from decisions of this Court, misconstruction of the holdings of several courts, and blindness as to certain authoritative decisions in a devious attempt to bring this case within the holdings of **Alaska Packers Asso. v. Industrial Acci. Com.**, 294 U. S. 532, 79 L. ed. 1044, 55 S. Ct. 518; **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629; and **Carroll v. Lanza**, 349 U. S. 408, 99 L. ed. 1183, 75 S. Ct. 804.

The issues in the case at bar are not the same as those involved in the aforementioned cases as will be demonstrated subsequently in this brief. This is not a case where an Alabama Court had before it the provision of the Georgia Workmen's Compensation Act making that Act the exclusive remedy of a Georgia workman. This provision was not raised by the pleadings, was not considered by any of the courts involved in this case, and played no part in the holdings of the District Court and Court of Appeals of the Fifth Circuit which Petitioner claims were an erroneous application of the Full Faith and Credit Clause.

An Alabama trial court rendered a decision enforcing the Georgia Act. In a suit in District Court on the judgment, Respondent contended that the trial court judgment was void for lack of jurisdiction of the subject matter based on the Alabama Supreme Court decision of **Singleton v. Hope Engineering Co.**, 233 Ala. 538, 137 So. 441, which was not followed by the trial court.

Petitioner contends the Alabama trial court was free to make its choice of law. Respondent contends it was not free to do so—that it was bound to follow the Alabama Supreme Court. Petitioner in his brief argues that the Alabama trial court decision was the proper expression of Alabama choice of law. Respondent maintains that the trial court was not free to make its choice of conflict of law rules, and that the expression of Alabama choice of conflict of law rules was that made by the Alabama Supreme Court in **Singleton v. Hope Engineering Co.**, supra.

The question to be decided by this Court then becomes this: Does the Alabama Supreme Court have the right to extend full faith and credit to the Georgia Workmen's Compensation Act thereby refusing to enforce in Alabama courts the administrative remedy provided by said Act.

Petitioner on page 12 of his brief states "This Court has repeatedly held that each state was free to adopt such rules of conflict of laws or choice of laws it may choose." This premise is repeated at several places in Petitioner's brief. Respondent fully agrees with Petitioner on this principle. Respondent believes that it demands an affirmative answer to the question set forth in the preceding paragraph. Alabama was free to construe the Georgia Act as it saw fit. Alabama had made that choice in **Singleton v. Hope Engineering Co.**, supra. If this Court answers the question in the affirmative then it must affirm the District Court and Court of Appeals.

If answered in the negative, Alabama, as the forum of this action, would be denied the right to decide the extent to which it wished to apply the law of Georgia. Alabama would be denied the right to adopt the construction of the Georgia statute as declared by Georgia courts and give it full faith and credit in Alabama Courts. A District Court in Alabama would be denied the right to declare void the decision of an Alabama trial court which failed to follow the principles of full faith and credit previously adopted by the Alabama Supreme Court.

This is not a case where the forum state was faced with the question whether the Full Faith and Credit Clause **required** it to adopt a sister state's cause of action or construction of that cause of action. Nor is it a case where an Act of a sister state is advanced as a defense to an action under the Act of the forum state. Instead, it is a case where the forum state's consideration of the enforcement of an Act of a sister state was based on a voluntary election by the forum state to follow the sister state's own construction of its cause of action.

Crider, the Petitioner, was employed by Lawler, a Georgia employer, to work in Alabama where he was injured. Both were under and subject to the Workmen's Compensation Law of the State of Georgia[1] (R. 11). Like-

[1] Ga. Code, Title 114, Workmen's Compensation, Sec. 114-411. "Accidents outside of State.—Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title."

wise, Crider and Lawler were under and subject to the Workmen's Compensation Law of Alabama as Alabama will apply its Compensation Law to an injury occurring in the State of Alabama[2] (Appendix B).

Petitioner, injured in Alabama, had a right of action under both the Alabama and Georgia Compensation Laws. There is now no question that Alabama can exercise its choice of conflict of laws to disregard Chapter 114-103 of the Georgia Code which seeks to exclude to the Georgia employees all remedies other than those under its Act. Respondent has never and does not now contend that this section is binding on Alabama. Nor did the District Court and the Court of Appeals consider nor rest their decisions upon this section.

**Carroll v. Lanza**, 349 U. S. 408, 99 L. Ed. 1183, 75 S. Ct. 804 permits Alabama to disregard this section and to allow the employee injured in Alabama a right of action under the Alabama Workmen's Compensation Law. If petitioner had not abandoned his action under the Alabama Act, the Alabama Courts would have completely disregarded Section 114-103 of the Georgia Act and permitted him to proceed with his action under Alabama law. But Petitioner elected to proceed in the Alabama court under the Georgia Act.[3] The Alabama court was then faced with the question of the full faith and credit to be extended the Georgia Act. And **Carroll v. Lanza**, supra, does not, as Petitioner contends, prohibit Alabama

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[2] 99 C. J. S., Workmen's Compensation, Section 22.

[3] Petitioner's complaint was first filed in three counts. Count 1 was a claim under the Alabama Workmen's Compensation Act. Counts 2 and 3 were not alleged to be under the Act but were by an employee against his employer (R. 15-18). Petitioner then amended his complaint by adding Count A, a claim under the Georgia Workmen's Compensation Act, and by striking Counts 1, 2, and 3 (R. 11, 12). The judgment was based on the amended complaint containing the claim under the Georgia Workmen's Compensation Act (R. 13, 14).

from choosing to extend full faith and credit to the Georgia Courts in their construction of their Act in such a situation.

Alabama, as the forum, may choose the extent to which it will apply this foreign law, **Magnolia Petroleum Co. v. Hunt**, 320 U. S. 430, 88 L. Ed. 149, 64 S. Ct. 208, subject to the well settled rule "that where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed." **Tennessee Coal I. & R. Co. v. George**, 233 U. S. 354 at 359, 58 L. Ed. 997, 34 S. Ct. 587. See also **Pollard v. Bailey**, 20 Wall. 520, 22 L. Ed. 376; **Stewart v. Baltimore & Ohio R. Co.**, 168 U. S. 445, 42 L. Ed. 537, 18 S. Ct. 105; and **Galveston H. & S. A. R. Co. v. Wallace**, 223 U. S. 481, 56 L. Ed. 516, 32 S. Ct. 205.

The Georgia Workmen's Compensation Law fits this rule, and as pointed out in Section II of this brief, Respondent contends that there was no other choice that Alabama could make in regard to the enforcement of the Georgia Act than that which it previously had made voluntarily. The method of enforcement of the rights conferred by the Georgia Workmen's Compensation Act is an exclusive one which can be afforded only by the Georgia State Board of Workmen's Compensation (formerly named Industrial Board) in a proceeding brought before it as the statute provides (Chapter 114-706, Appendix C).

Petitioner in his brief misleads this Court by failing to advise that the Alabama Supreme Court, prior to the judgment of the DeKalb County Circuit Court, had chosen and declared the extent the remedy of the Georgia Workmen's Compensation Act would be applied in Alabama. The Alabama Supreme Court in **Singleton v. Hope Engineering Co.**, 223 Ala. 538, 137 So. 441 sustained a demurrer to a complaint which sought enforcement of a claim under the Georgia Workmen's Compensation Act. This deci-

sion extended full faith and credit and adopted the Georgia Court decisions construing the Georgia Act by holding as follows:

> "The demurrer points out that the courts in this state have no jurisdiction because the several litigable issues of fact arising under the Georgia statute are vested exclusively under the Georgia Workmen's Compensation Commission . . . The right sought to be enforced had its origin and existence in the Georgia Workmen's Compensation statute. The remedies for its breach are recoverable in the manner provided by proper pleadings and procedure before the Industrial Commission of our sister state." 137 So. at p. 443.

The Alabama Supreme Court thus elected not to enforce an action that could not be maintained in the Georgia courts. The DeKalb County Circuit Court was not free to apply its own choice of law. In failing to follow **Singleton v. Hope Engineering Co.**, supra, its decision was void as it had no jurisdiction of the subject matter.

Petitioner contends that the actions of the District Court (R. 23-25) and of the Court of Appeals for the Fifth Circuit (R. 28) in following **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359 (5th Cir. 1947), conflicts with the holding of this Court in **Alaska Packers Asso. v. Industrial Acc. Com.**, 294 U. S. 532, 79 L. Ed. 1044, 55 S. Ct. 518, supra; **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, 306 U. S. 493, 83 L. Ed. 940, 59 S. Ct. 629, supra, and **Carroll v. Lanza**, 349 U. S. 408, 99 L. Ed. 1183, 75 S. Ct. 804, supra. There is no conflict. The fact situations and legal issues are different.

In **Alaska Packers Asso. v. Industrial Acci. Com.**, supra, an employee was employed in California but was injured in Alaska. Action was brought under the California Work-

men's Compensation Act. The inquiry of this Court was whether a defense under the Alaska Act could be asserted in the California action under California law. This Court answered in the negative. This case merely stands for the proposition that the state of employment may apply its own law to an action brought in its courts by a workman injured elsewhere and does not have to apply the law of the state of injury. The case is no authority for the case at bar. Alabama is the state of the injury, not the state of employment. The judgment was not based on Alabama law, but on Georgia law.

In **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, *supra*, an employee who had been employed in Massachusetts was injured in California. Action was brought this time in the place of injury, California, and under the California Workmen's Compensation Act. The question was whether an exclusive provision of the Massachusetts Act prevented the forum and place of injury from applying its own Act. This Court held "that the full faith and credit clause does not **require** one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, . . .", 306 U. S. at 502. (Emphasis supplied.) This case differs from the **Alaska Packers** case for here the action was brought in the state of injury under its Act. Again this Court held that the local Act could be applied even though the Act of the place of employment had an exclusive remedy provision. The case at bar does not fit this holding. True, the action was in the place of injury, Alabama, but was not under Alabama law.

In **Carroll v. Lanza**, *supra*, an employee of Missouri was injured in Arkansas. He was receiving payments under the Missouri Workmen's Compensation Act when he filed a common law action in Arkansas against a third party. This Court had before it the question whether the

Full Faith and Credit Clause made an exclusive provision of the Missouri Act a bar to Arkansas' common law action in the situation where the Missouri award was not final. This decision like the two preceding is not applicable to the case at bar as the cause of action was not brought under the law of the forum.

All three of the cases just mentioned, **Alaska Packers Asso. v. Industrial Acci. Com.**, supra; **Pacific Employers Ins. Co. v. Industrial Acci. Com.**, supra; and **Carroll v. Lanza**, supra, have two features in common. The causes of action asserted are under the law of the forum. Second, there is asserted as a defense in the action in the forum a provision of a statute of another state making a cause of action in the foreign state the exclusive remedy available to the plaintiff. Both of these features distinguish these three cases from the case at bar and from **Green v. J. A. Jones Const. Co.**, supra. In the case at bar the action was not under the law of Alabama, the forum, but was under the law of Georgia. Nor was the exclusive remedy provision in the Georgia Act claimed as a bar to an action under the Alabama Act. As asserted previously, Petitioner voluntarily abandoned his cause of action under the Alabama Workmen's Compensation Act in favor of a cause of action under the Georgia Act.

In **Green v. J. A. Jones Const. Co.**, supra, the suit was brought in a Mississippi Circuit Court and thereafter removed to a District Court. The action was not under the Mississippi Workmen's Compensation Act, but was brought under the Georgia Act. The District Court, sitting as a Mississippi court, adopted the construction of the Georgia Act as determined by Georgia courts.

On pages 6 and 7 of his brief, Petitioner states that the **Green** decision ran afoul of **Carroll v. Lanza**, supra, and argues falaciously that the District Court and Court of Appeals refused recovery by applying the provision of the Georgia Act making an action under the Georgia Act an

exclusive remedy. Petitioner misconstrues the holding of the **Green** case. The District Court and Court of Appeals denied recovery solely on the ground that Georgia had provided that the enforcement of **an action under its Act** could only be by a proceeding before the Georgia State Board of Workmen's Compensation. The provision for liability claimed under that Act was coupled with an exclusive administrative remedy.

The **Green** case and the District Court and Court of Appeals in the case at bar did not decide nor hold that Crider's cause of action for his injury was limited solely to an action under the Georgia Workmen's Compensation Act. Certainly the Alabama trial court in this case was free to apply the Alabama Workmen's Compensation Act. The District Court and Court of Appeals as did the Court in **Green v. J. A. Jones Const. Co.**, supra, simply held that Crider having by his own free will and choice elected not to proceed under the Alabama Act, could not proceed under the Georgia Act in an Alabama court for the Georgia Act is administered by an Industrial Board and not by the courts. Choosing the right afforded by the Georgia Act he was relegated to the remedy afforded by that Act, namely a proceeding before the Georgia State Board of Workmen's Compensation.[4]

The present action presents the same situation. Petitioner elected to bring his action in the place of injury, Alabama, but elected to attempt pursuit of the right of action afforded by the Workmen's Compensation Act of

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[4] "The Georgia decisions settle it that the remedy for enforcement of the rights conferred by the Georgia Workmen's Compensation Act, Code 1933, is an exclusive one which can be afforded only by the State Board of Workmen's Compensation in a proceeding brought before it as the statute provides . . . This being so, it is quite clear that the case is ruled by the principle that where the provision for the liability claimed is coupled with a provision for a special remedy to be afforded not by a court but by a commission, that remedy and that alone must be employed and resort to court action may not be had for relief." 161 F. 2d at 359

the place of employment, Georgia. The Georgia Act provides an exclusive remedy for enforcement of its Act. Alabama would not be **required** under the Full Faith and Credit Clause to enforce this remedy in its courts. **Pacific Employers Ins. Co. v. Industrial Accl. Com.**, supra. Nor would Alabama in an action under the Alabama Act, have been barred by the provision of the Georgia Act making an action under its Act the exclusive remedy for Georgia employees.

Alabama, however, had **elected** when applying the Georgia Compensation Act, to extend full faith and credit to the exclusive method of enforcement afforded by the Georgia statute and decisions. The DeKalb Circuit Court in failing to follow the Alabama Supreme Court rendered a void judgment.

Petitioner devotes much of his brief to the argument that the DeKalb County Circuit Court weighed certain "considerations" and "governmental interests" prior to awarding judgment under the Georgia Act. This is a figment of Petitioner's imagination as the judgment of that Court (R. 13, 14) states no such "considerations." On page 9 of his brief Petitioner lists these "considerations." These would have been ample to empower the Alabama Court to assume the action brought by Petitioner under the Alabama law. But the Alabama court was not asked to make this choice of law decision. Strangely the Petitioner decided to cast aside these "considerations" and others including benefits,[5] and chose to proceed under the Georgia Act. The Alabama court did not have before it the question whether to apply the Alabama Act or the

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[5] Compensation benefit under the Georgia Law (Ga. Code. Title 114, Sec. 404) was limited to $10,000. Benefits under the Alabama Workmen's Compensation Law would have amounted to $11,200. 1940 Ala. Code, Title 26, Sec. 279 (e) 3 and Sec. 289 (400 weeks at the rate of $28.00 per week).

Georgia Act. Hence, the Alabama Court had no reason to weigh the "governmental interests" of Alabama against those of Georgia. Petitioner had a remedy under the Alabama Act. If he becomes a public charge, it is because he chose to abandon that remedy.

Petitioner also argues that Georgia has dictated the extraterritorial effect of its Statute to Alabama. We have already indicated that Alabama voluntarily elected the effect to give to the Georgia Act.

Nor has Mississippi dictated the choice of law rules to be followed by Alabama as Petitioner states on page 15 of his brief.

Petitioner also states on page 15 of his Brief, that Mississippi had desired to recognize as a defense the exclusive remedy provision of the Georgia Statute. This is incorrect. Mississippi chose to recognize that the method of enforcement of the Georgia Act was exclusive as Georgia afforded enforcement only by the State Board of Workmen's Compensation. Mississippi chose to recognize that right and remedy under the Georgia Act are inseparable.

Petitioner further states on page 15 that it was not the policy of Alabama to do as Mississippi did in **Green** and recognize the exclusive method of enforcement of the Georgia Act. This is patently false. Alabama made the same choice in **Singleton v. Hope Engineering Co.**, 223 Ala. 538, 137 So. 441. This court has recognized the right of Alabama and Mississippi to make this choice of conflict of law rules, **Wells v. Simonds Abrasive Co.**, 345 U. S. 514, 97 L. ed. 1211, 73 S. Ct. 856. Therefore, **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, supra, is complete authority for the action of the District Court and the Court of Appeals of the Fifth Circuit in this case.

II.

**Where the Provision for the Liability Claimed Is Coupled With the Provision for a Special Remedy to Be Afforded Not by a Court But by a Commission, That Remedy Alone Must Be Employed and Resort to Court Action May Not Be Had for Relief.**

The DeKalb County Circuit Court judgment in denying full faith and credit to the Georgia construction of its Workmen's Compensation Act, was void for a reason other than it failed to follow the choice of law rules of the Alabama Supreme Court.

Respondent concedes that Georgia may not require Alabama to give to a Georgia employee injured in Alabama a remedy only under the Georgia Act. But Respondent does contend that an action cannot be brought in Alabama courts under the Georgia Act, as the full Faith and Credit Clause requires Alabama to give full faith and credit to the administrative remedy prescribed in the Georgia Act by which the action may be enforced.

The Full Faith and Credit Clause is subject to certain minimum requi ements. **Wells v. Simonds Abrasive Co.**, 345 U. S. 514, 9. L. ed. 1211, 73 S. Ct. 856. In compliance with these mi imum requirements, a foreign compensation act cannot be enforced in the courts of the place of injury when the foreign compensation act provides for the remedy to be enforced by an administrative commission or board, rather than in the courts. **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359 illustrates this:

> "Appellant's reliance on Floyd v. Vicksburg Cooperage Co., 156 Miss. 567, 569, 126 So. 395, holding that a suit may be brought in Mississippi to enforce the Louisiana Workmen's Compensation Act will not do. 'The Louisiana Compensation Law provides for its enforcement in the courts of that state' and 'The

liability created is enforceable in the courts of another state'; United Dredging Co. v. Lindberg, 5 Cir., 18 F. 2d 453, 454. The Georgia statute sought to be enforced here 'commits the enforcement of its provisions to an administrative board, whereas the Louisiana statute is required to be administered by the courts,' Id., 18 F. 2d 454, 455."

This is an application of the well-settled principle applied in cases where the foreign act unites the right with a special remedy. **Tennessee Coal, I & R Co. v. George,** 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587, states this principle:

> "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that 'where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed.'" 233 U. S. at 359.

Of like import are **Pollard v. Bailey,** 20 Wall. 527, 22 L. ed. 376; **Stewart v. Baltimore & Ohio R. Co.,** 168 U. S. 445, 42 L. ed. 537, 18 S. Ct. 105; **Galveston, H. & S. A. R. Co. v. Wallace,** 223 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205.

American Law Institute's Restatement, Conflict of Laws, is in accord with these holdings.[6]

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[6] Restatement, Conflict of Laws, Sec. 618, Conditional Cause of Action.—"If a state makes the existence of a cause of action conditional on some act or event, no suit can be maintained in another state unless the condition is satisfied." "Comment: a. Where a statutory foreclosure act requires that the land must first be applied to the satisfaction of the debt before a cause of action arises, no action will lie in another state to recover the amount due until the land has first been applied to the satisfaction of the debt. *So where a Workmen's Compensation Act provides for the fixing of the amount of compensation by a commission, no action can be brought on such a claim in another state until the amount of compensation has been so fixed*" (Emphasis supplied).

The textwriters agree that a claim to be valid must follow the designated procedure, and under the requirement that only the special tribunal created by the particular state can administer claims thereunder, rights created by the compensation act of one state cannot ordinarily be enforced in another state or in a Federal Court.[7]

Many jurisdictions have refused to apply the Compensation Law of another state where the statute of the other state provided that the law be administered by an Industrial Commission or Workmen's Compensation Board.[8]

The United States Court of Appeals for the Tenth Circuit[9] has recognized the rule of **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, supra.

In the case of **Grenier v. Alta Crest Farms** (Ver.), 58 A. 2d 884, the plaintiff brought a suit against the defendant claiming compensation under the Workmen's Compensation Act of Massachusetts before the Industrial Rela-

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[7] Larson's Workmen's Compensation Law, Sec. 84.20, Page 356.

[8] Singleton v. Hope Engineering Co., 223 Ala. 538, 137 So. 441 (1931) (Alabama refused to apply the Georgia Act);
Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 (Arkansas refused to apply the Oklahoma Act);
Douthwright v. Champlin, 91 Conn. 524, 100 A. 97 (Connecticut refused to apply the Massachusetts Act);
Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223 (Missouri refused to apply the Kansas Act);
Davis v. Swift & Co., 175 Tenn. 210, 133 S. W. 2d 483 (Tennessee refused to apply the Florida Act);
Johnson v. Employers Liability Assur. Corporation, 99 S. W. 2d 979 (Texas refused to apply the Louisiana Act);
Elliott v. DeSoto Crude Oil Purchasing Corporation, 20 F. Supp. 743 (W. D. La.) (Louisiana refused to apply the Texas Act);
Grenier v. Alta Crest Farms, 58 A. 2d 884 (Vermont refused to apply the Massachusetts Act).

[9] See Fresquez v. Farnsworth & Chambers Company, 238 F. 2d 709 (10th Cir. 1956), where the Court says at p. 712: "But where a statute creates a right and provides a remedy for its enforcement in a certain tribunal, and the two are inseparably blended and united, the right can be enforced only in the specified tribunal. Pollard v. Bailey, 20 Wall. 520, 22 L. ed. 376; Tennessee Coal, Iron & Railroad Co. v. George, supra."

tions Board of Vermont. Massachusetts had an Industrial Board. The Vermont Court held that the Vermont Board of Industrial Relations and the courts of Vermont did not have jurisdiction of the case.[10]

As was held in **Mosely v. Empire Gas & Fuel Co.**, 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223, a statute of Kansas cannot confer upon a Missouri court in a suit for money, a jurisdiction and a power wholly unknown to the Missouri Code of procedure. Such a statute cannot do this directly nor can it do so indirectly through an attempted authorization of the Missouri Court to make rules necessary and appropriate to carry out the purpose of the Kansas statute. By that statute the right and remedy are so united, and the provision of liability is so coupled with a provision for a special remedy to be administered by

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[10] The Vermont Court at p. 888 correctly stated the appropriate principle: "* * * While the statute gives a right to compensation to an employee who comes within its terms; it also provides a specific and exclusive remedy for the enforcement of that right before a special tribunal created for such purpose. If an employee seeks the benefits given him by the statute he is bound to recognize and perform the obligations thereby placed upon him. Such right is limited and can be enforced only by following the procedure given by the statute which created such right. The remedy is an integral part of the right given and the latter has no existence separate and apart from the former. United States ex rel. Texas Portland Cement Co., etc. v. McCord, 233 U. S. 157, 34 S. Ct. 550, 552, 58 L. ed. 893; Galveston H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 490, 32 S. Ct. 205, 56 L. ed. 516; Globe Newspaper Co. v. Walker, 210 U. S. 356, 28 S. Ct. 726; 52 L. ed. 1096; Fourth Nat. Bank v. Francklyn, 120 U. S. 747, 756, 7 S. Ct. 757, 30 L. ed. 825; Pollard v. Bailey, 20 Wall. 520, 526, 527, 22 L. ed. 376; Hartford Accident & Indemnity Co. et al. v. Delta & Pine Land Co., 292 U. S. 143, 54 S. Ct. 634, 78 L. ed. 1178, 92 A. L. R. 928; Devine's Case, 236 Mass. 588, 592, 593, 129 N. E. 414, 416; Migue's Case, 281 Mass. 373, 183 N. E. 847, 848."

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"It follows that the commissioner of industrial relations is without jurisdiction to entertain the petition filed with him in the case at bar. The employee has no right arising under the Massachusetts Workmen's Compensation Act, * * * which he can enforce before the commissioner or the courts of this state."

designated tribunal with certain specific powers given that the remedy must be sought in the designated tribunal.

The application of this principle to actions under Workmen's Compensation Acts is similar to the familiar principle that one must exhaust the administrative remedies provided for enforcement of his cause of action before he can resort to the courts.

This Court applied this principle in **Transcontinental & West. Air v. Koppal**, 345 U. S. 653, 97 L. ed. 1325, 73 S. Ct. 906, denying recovery to an employee in an action for wrongful discharge brought under the Railway Labor Act. The employee could have brought an action under either the Missouri law or under the Federal Act. But he could not do so until he had exhausted his administrative remedies for the Missouri law so provided.

In this case, Petitioner cannot resort to the Courts of Alabama to enforce his right of action under the Georgia Workmen's Compensation Act for with that Act there is provided an administrative remedy. This administrative remedy must first be exhausted before the court of any state can give him relief.

To illustrate the reasoning for this rule of requiring exhaustion of administrative remedies before resorting to the courts in these cases where right and remedy are so coupled as to be united, Respondent would like to draw the Court's attention to certain provisions of the Georgia Workmen's Compensation Act, Chapter 114. All of the sections listed below give the State Board of Workmen's Compensation broad discretionary rights. The pertinent portions of these sections are set out in Appendix D to this brief.

The Board can excuse the giving of notice of an accident to an employer (Sec. 303). Claims must be filed with the Board (Sec. 305). The Board may stop compensation to an employee who refuses to work when employment is

procured for him (Sec. 407). Certain elements of proof in a hernia claim must be made to the Board's satisfaction (Sec. 412). The Board may apportion compensation (Sec. 414), may deduct improper payments (Sec. 415), may alter the period of payments (Sec. 416), may make a lump sum award (Sec. 417), may select a trustee (Sec. 418), may decide between disputing claimants (Sec. 420). The Board appoints guardians (Sec. 421).

The Board determines the necessary medical treatment and selects the physicians (Sec. 501) and may order a claimant to be examined before a designated physician (Sec. 503).

The Board formulates the necessary rules (Sec. 703), prepares and furnishes blank forms (Sec. 704), and decides all questions arising under the Act (Sec. 715). Agreements must be filed with the Board (Sec. 705). The Board conducts hearings on disputed claims (Sec. 706), makes awards (Sec. 707), and reviews previous awards (Sec. 709).

The Board fixes the fees of attorneys, physicians, and hospitals (Secs. 713 and 714).

Alabama has no comparable board to administer the cause of action under the Georgia Act. How can Alabama courts enforce this remedy? They cannot, and it would be utterly futile for them to attempt to do so. The administration by the Georgia Board is so much a part of the cause of action that it cannot be separated.

Petitioner states that **Pearson v. Northeast Airlines, Inc.**, 309 F. 2d 553 (2nd Cir. 1962) is contrary to **Green v. J. A. Jones Const. Co.**, 161 F. 2d 359, supra. The **Pearson** case permitted New York in trying an action under the Massachusetts wrongful death law to disregard the limitation on damages placed by Massachusetts on the cause of action. This is not in anywise comparable to the present case. In **Pearson**, there was no contention that New York courts could not enforce the Massachusetts

cause of action. Here, Alabama courts have no jurisdiction to enforce the Georgia Act which provides for administration by an Industrial Board. Furthermore, such enforcement would conflict with public policy of Alabama. In **Pearson**, New York offered plaintiff no cause of action under its own law, not being the situs of injury. The transitory cause of action under Massachusetts law was the only remedy open to plaintiff in New York. Here, there was a cause of action open to petitioner both under Alabama and Georgia law.

In **Pearson**, the court allowed New York to separate the limitation on damages from the enforcement of the cause of action. Damages is only one aspect of a cause of action. You can separate in a wrongful death action the giving of the cause of action from the limitation on damages. This is entirely different from separating the cause of action from the method of its enforcement. If a cause of action is to be enforced before an administrative board, the right and remedy are united. When they are separated, the entire cause of action becomes a new and different creature from what its creator intended. If the wrongful death action of Massachusetts was administered purely by an administrative agency of Massachusetts and no resort to court action was provided, there would be no **Pearson** holding. New York would have had no jurisdiction of a cause of action under such a Massachusetts statute.

Petitioner's reliance upon the Pearson case is a comparison of a cake and its frosting in an attempt to make a conflict where there is none. There is no conflict between **Pearson** and **Green**. The reasoning underlying **Pearson** does no violence to the reasoning of the **Green** case. The two cases involve different legal issues and to try to equate the two is to say that night is the same as day.

Petitioner also cites the case of **Kilberg v. Northeast Airlines, Inc.**, 9 N. Y. 2d 34, 172 N. E. 2d 526 which in-

volved the same question decided in the **Pearson** case. The **Kilberg** case is stated to be authority for the proposition that the law of the forum controls in determining what is procedural and what is substantive. Although the **Kilberg** case did not rest its holding upon a determination that the limitation on damages was a procedural question, Respondent does not quarrel with this general statement of law.

Respondent urges this Court to review the Georgia Act and decisions. The administrative remedy is mandatory, not permissive, as Petitioner argues. See Chapter 114-706, Georgia Code, and the following Georgia decisions: **Grice v. United States Fidelity & Guaranty Company**, 187 Ga. 259, 200 S. E. 700; **Blue Bell Globe Mfg. Co. v. Baird**, 64 Ga. App. 347, 13 S. E. 2d 105; **Echols v. Chattanooga Mercantile Co.** (Ga. App.), 38 S. E. 2d 675.

When an administrative remedy is coupled with the cause of action, both are so dependent upon one another, so strongly united, that they cannot be separated. It may be that both are substantive regardless of the reasoning, this Court recognized in **Tennessee Coal, I. & R. Co. v. George**, 233 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205, that where right and remedy are so united, "the right cannot be enforced except in the manner and before the tribunal designated by the act," 233 U. S. at 359. The **George** case was cited by Petitioner as holding that Georgia cannot determine jurisdiction of Alabama courts. Conceding this, the case does illustrate the situation where a sister state has so united right and remedy that a forum state cannot make a distinction between what is procedural and what is substantive. In **Singleton v. Hope Engineering Co.**, 233 Ala. 538, 137 So. 441, supra, Alabama followed this principle by holding that the remedy for enforcing the Georgia Act was substantive in concert with the cause of action itself.

Petitioner contends that the inability of the Alabama court to apply the Georgia Act will deny Petitioner a recovery and that he may become a public charge. If this were true, it would be a bed of Petitioner's own making. Petitioner first chose the law of Alabama, the place of injury (R. 15-18). He could have recovered thereunder. He then abandoned Alabama law (R. 12). He chose next to proceed under Georgia law (R. 11, 12). The Georgia law is administered by a State Board of Workmen's Compensation. Even Georgia courts cannot administer the Georgia Act.

As was said by the District Court to permit this original action in the Courts of Alabama to enforce a claim under the Georgia Workmen's Compensation Law is to allow an original proceeding in such courts where the same is denied to the Courts of Georgia.

Surely this result as contended by Petitioner would result in Alabama using the law of its sister state, Georgia, to reach a result never intended by Georgia legislators. The Alabama trial court did not have jurisdiction to make an award under the Georgia Workmen's Compensation Act. Its judgment is void for that reason.

Giving jurisdiction to Alabama Courts to enforce a Georgia prescribed administrative remedy would place a strain on the Full Faith and Credit Clause which would separate it from its minimum requirements.

## III.

**A Party or His Privies Will Be Permitted to Attack a Judgment Collaterally Where the Judgment Is Void for Want of Jurisdiction of the Court Over the Subject Matter.**

The DeKalb County Circuit Court did not have jurisdiction of the subject matter. Therefore, the issue of

jurisdiction is subject to inquiry. Judgments of courts can be impeached for jurisdictional defects disclosed on the face of the record. Where the record discloses a lack of jurisdiction the judgment is void. **City of Birmingham v. Reed**, 35 Ala. App. 31, 44 So. 2d 607; **Murphy v. Louisville & N. R. Co.**, 258 Ala. 138, 61 So. 2d 3; **Crump v. Knight**, 256 Ala. 601, 56 So. 2d 625; **Freeman v. McBroom**, 11 Ala. 943.

It clearly appears on the face of the record that in the DeKalb County Circuit Court in which the judgment was obtained the judgment was rendered under the Workmen's Compensation Law of the State of Georgia. In fact, the complaint claims under the Workmen's Compensation Law of the State of Georgia and proof was made to the court under the Workmen's Compensation Law of the State of Georgia. The judgment was void for want of jurisdiction of the DeKalb County Circuit Court. Therefore, the judgment could be assailed in the District Court.

A party or his privies may assail such a judgment. **Fife v. Pioneer Lumber Co.**, 237 Ala. 92, 185 So. 759; **Cobbs v. Norville**, 227 Ala. 621, 151 So. 576.

Jurisdiction of a court over the subject matter is at all times open to inquiry either on appeal or when the judgment rendered is attacked collaterally, and no consent, laches or solicitation of the parties can cure such defect. **City of Birmingham v. Reed**, supra.

The Alabama Court in the case of **Murphy v. Louisville & N. R. Co.**, supra, held at So. page 5.

> "Where the court is without jurisdiction of the res—the subject matter— * * * it is without jurisdiction as a matter of law and its finding is not *res judicata.*"

And in the case of **Crump v. Knight**, supra, the Court stated at So. page 627: "Courts acting without authority

can impart no validity to their proceedings and their judgments are assailable in any proceeding."

It is axiomatic that the judgment of the Circuit Court of DeKalb County is void and could be attacked in this case. The Alabama Court in the case of **Woolf v. McGaugh**, 175 Ala. 299, 57 So. 754, quoting with approval the statement from **Freeman v. McBroom**, supra, had this to say at page 945:

> "It has frequently been held, in suits at law, that when the court has no jurisdiction of the subject matter in dispute, such want of jurisdiction cannot be waived by appearance, plea, consent, or in any other manner, and a judgment rendered in such case is favor of the plaintiff will be void."

IV.

**When a Judgment of a State Court Comes Under Consideration in a Court of the United States the Question of Jurisdiction of the State Court to Render the Judgment Is Open to Inquiry in The United States Court.**

State Court jurisdiction may be attacked in a Federal Court in a suit upon the judgment of the state court. **Cooper v. Newell**, 173 U. S. 555, 43 L. Ed. 808, 19 S. Ct. 506; **Tilt v. Kelsey**, 207 U. S. 43, 52 L. Ed. 95, 28 S. Ct. 1.

In a suit in a United States Court on a judgment of a court of one of the states, full faith and credit requires the enforcement of the judgment and prevents it from being collaterally attacked unless it is shown that the judgment was entered without jurisdiction. **New York v. Halvey**, 330 U. S. 610, 91 L. Ed. 1133, 67 S. Ct. 903; **Griffin v. Griffin**, 327 U. S. 220, 90 L. Ed. 635, 66 S. Ct. 556; **Adam v. Saenger**, 303 U. S. 59, 82 L. Ed. 649, 58 S. Ct. 454; **Merrell v. United States**, 140 F. 2d 602 (10th Cir., 1944).

The **Halvey** case had this to say, 330 U. S. at 614:

> "If the court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the Full Faith and Credit Clause."

The Court of Appeals' judgment was not in error in denying "full faith and credit" to the **void judgment** of the Circuit Court of DeKalb County, Alabama. After all, the Federal Courts were doing nothing more than the Jefferson County Circuit Court did when Petitioner first filed his suit on the judgment there. That state court also ruled that suit on the DeKalb County Circuit Court judgment could not be maintained (Appendix A) following the holdings in **Singleton v. Hope Engineering Co.**, 233 Ala. 538, 137 So. 441, and **Green v. J. A. Jones Construction Co.**, 161 F. 2d 359.

## CONCLUSION.

Petitioner raised certain questions for the consideration of this Court. As we have demonstrated in this brief, all of these questions are answered against the contentions of the Petitioner.

The DeKalb County Circuit Court was not free to enforce the Georgia Workmen's Compensation Act. It was bound to follow the prior holding of the Alabama Supreme Court. Nor was the Alabama Supreme Court free to enforce the Georgia Act because Alabama had no method of enforcement of the administrative remedy provided by the Georgia Act.

The actions of the Courts below did not deny to Alabama freedom to adopt such rules governing conflicts of laws as it chose. The Alabama Supreme Court had already made such a choice and the actions of the Courts below merely implemented this choice.

The Court of Appeals' decision did not deny to Alabama the right to determine what aspects of Georgia law were procedural, and what aspects were substantive. The procedure-substantive law question is not involved in the question whether Alabama courts may enforce the administrative remedy of the Georgia Act. This administrative remedy was so coupled with the right of action itself that they could not be separated. The Alabama courts had no jurisdiction of the subject matter of the Georgia Compensation Act. The action of the Court of Appeals in refusing to enforce the judgment of the DeKalb County Circuit Court was proper. The Full Faith and Credit Clause does not require either a state or federal court to enforce a judgment of another court which is void for want of jurisdiction of the subject matter.

Time has honored the decisions of this Court, of lower federal courts, and of courts of the various states holding that a right which is created to be enforced only before a special administrative tribunal must be enforced only before that special tribunal. No court has jurisdiction of the right. The Jefferson County Circuit Court, the District Court for the Northern District of Alabama, and the Court of Appeals for the Fifth Circuit all adhered to this precedent when they ruled void the judgment of the DeKalb County Circuit Court which flew in the face of this precedent by assuming such jurisdiction in place of the administrative board of Georgia.

The Full Faith and Credit Clause does not **require** nor **permit** the courts of a forum state to assume jurisdiction of a cause of action under the Workmen's Compensation Act of a sister state which has provided that its Act be enforced by an administrative board. A holding otherwise would create insurmountable practical difficulties. If this Court rules in favor of Petitioner it will permit Alabama courts in enforcing a Georgia Act to do under the

guise of the Full Faith and Credit Act what Georgia has not permitted its own courts to do.

Respondent respectfully urges this Court to affirm the action of the Court of Appeals of the Fifth Circuit.

.....

FOSTER ETHEREDGE,
First National Building,
Birmingham, Alabama,
Attorney for Respondent.

Of Counsel:

OLLIE L. BLAN, JR.,
SPAIN, GILLON & YOUNG,
First National Building,
Birmingham, Alabama.

**Proof of Service.**

I, Foster Etheredge, one of the attorneys for Zurich Insurance Company, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of September, 1964, I served copies of the foregoing Respondent's Brief on the Merits on the Petitioner by depositing the same in a United States Post Office with first-class postage prepaid, addressed to J. Terry Huffstutler, counsel of record for the Petitioner, at his Post Office address, First National Building, Birmingham, Alabama 35203.

.....

Foster Etheredge,
First National Building,
Birmingham, Alabama,
Attorney for Zurich
Insurance Company.

## APPENDIX A.

Case of Thomas J. Crider v. Zurich Insurance Company.

In the
Circuit Court of Jefferson County, Alabama.

### Complaint.

Thomas J. Crider,
Plaintiff.
vs.
Zurich Insurance Company, a Corporation,
Defendant.
No. 48637-X.

**Count 1:**

Plaintiff claims of the defendant the sum of Ten Thousand Five Hundred Dollars ($10,500.00) together with interest at the rate of six percent (6%) per annum from February 11, 1959, for that plaintiff obtained a judgment in the Circuit Court of the Ninth Judicial Circuit of Alabama at Fort Payne, Alabama, on February 11, 1959, for the amount of Ten Thousand Five Hundred Dollars ($10,500.00) together with costs of court in the amount of One Hundred Dollars ($100.00) against his employer, A. H. Lawler Construction Company, a corporation, for injuries received by the plaintiff on July 11, 1956, while performing duties for his employer within the line and scope of his employment in DeKalb County, Alabama, and plaintiff avers that the defendant Zurich Insurance Company was the insurer of the said A. H. Lawler Construction Company, Inc., a corporation, for liability on workmen's compensation and for the injuries and damages which plaintiff sustained on said occasion. And plaintiff

avers that, under the said contract of insurance existing on said occasion between the defendant and the said A. H. Lawler Construction Company, Inc., a corporation, the defendant agreed that it could be sued by any person who had secured a judgment such as the one obtained by plaintiff against the said insured, A. H. Lawler Construction Company, Inc., a corporation.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

**Zurich's Plea and Answer.**

Comes the defendant and for plea and answer to the Complaint filed in this cause, and to each count thereof, separately and severally, and sets down and assigns, separately and severally, the following separate and several pleas:

Plea One: Not guilty.

Plea Two: The allegations of said count are untrue.

Plea Three: That the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the Judgment described in said Complaint and the Judgment is null and void.

Plea Four: Defendant avers that the Judgment described in plaintiff's Complaint was rendered by the Circuit Court of DeKalb County, Alabama, in Case No. 590. A true and correct copy of the portion of the record in said case, namely, the Complaint as Last Amended, and the Judgment of Court Awarding Compensation, is attached hereto, marked "Exhibit A"[1] and "Exhibit B",[2] respectively, and made a part hereof as if fully set out

[1] (R. 11, 12, 15-18).

[2] (R. 13, 14).

herein at this point. Defendant further says that at all times mentioned in said Complaint and on the date of the said Judgment, it was the applicable law of the State of Georgia as contained in the Workmen's Compensation Law of that State, Title 114, Chapter 114-706, Georgia Code, Acts of the Georgia Legislature of 1920, page 197; 1937, pages 7 and 43; 1945, page 462; 1956, pages 725 and 726, that:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter

of the suit in which the Judgment described in the Complaint was rendered, and the Judgment is null and void. Therefore, the Defendant says the plaintiff should not recover of the defendant.

Plea Five: For purposes of this Plea, defendant adopts all of the averments of Plea Four down to and including the words "most convenient for a hearing" and in lieu of the averments following the said quoted words, says as follows: Further, it is the law of the State of Georgia, Title 114, Chapter 114-305, Georgia Code, Acts of the Georgia Legislature, 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered and the Judgment is null and void. Therefore, the Defendant says that the Plaintiff should not recover.

Plea Six: Defendant avers that at all times mentioned in said Complaint and on the date of said Judgment it was the law of the State of Georgia, as contained in the Workmen's Compensation Law of that State, Title 114, Chapter

114-305, Georgia Code, Acts of the Georgia Legislature of 1920, page 181; 1925, pages 282 and 284; 1931, pages 7 and 43, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter, except that if a claimant proceeds in good faith against a corporation, the character of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

For the purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says that the Circuit Court of DeKalb County, Alabama, was without jurisdiction of the subject matter of the Complaint as Last Amended for that the sole method of claiming compensation under the Georgia Workmen's Compensation Act is by the filing of a claim with the Georgia State Board of Workmen's Compensation within one year from the date of the accident, and defendant avers that the plaintiff did not file a claim with the Georgia State Board of Workmen's Compensation within one year after the accident described in the Complaint as Last Amended. Hence, the Judgment of the Circuit Court of DeKalb County, Alabama, is null and void and the plaintiff should not recover.

Plea Seven: For purposes of this Plea, defendant adopts the first paragraph of Plea Four, and defendant further says as follows: That at all times mentioned in said Complaint and on the date of said Judgment it was the applicable law of the State of Georgia, as contained in the

Workmen's Compensation Law of that State, Title 114, Chapter 114-411, Georgia Code, Acts of the Georgia Legislature of 1920, page 187, that:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State."

Defendant says that the accident described in said Complaint happened in the State of Alabama while the plaintiff, who was a resident of the State of Alabama, was employed in the State of Alabama. Defendant says further that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made in the State of Alabama. Defendant says that the plaintiff was not entitled to compensation under the laws of the State of Georgia, and defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction to award the plaintiff compensation under the law of the State of Georgia, and that the Judgment of said Court is void.

Plea Eight: For purposes of this Plea defendant adopts the first paragraph of Plea Four. Defendant says that the statutes and laws of the State of Georgia were not pleaded by the plaintiff in the Complaint as Last Amended, and defendant says that the Circuit Court of DeKalb County, Alabama, had jurisdiction only to apply the common law of the State of Alabama as being one and the same as the State of Georgia. Therefore the defendant says that the Circuit Court of DeKalb County, Alabama, did not have

jurisdiction to award compensation under the Workmen's Compensation Law of the State of Georgia, and not having jurisdiction of the subject matter of the suit the Judgment is void.

Plea Nine: For purposes of this Plea defendant adopts the first paragraph of Plea Four, and defendant says as follows: Further, it is the law of the State of Georgia Title 114, Chapter 114-305, Georgia Code, that:

> "The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired, but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply."

Title 114, Chapter 114-411, Georgia Code:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this State or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State."

Title 114, Chapter 114-706, Georgia Code:

> "If the employer and the injured employee or his dependents fail to reach an agreement in regard to

compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing."

Defendant says that only the State Board of Workmen's Compensation of the State of Georgia had jurisdiction to award the plaintiff workmen's compensation under the Workmen's Compensation Law of the State of Georgia, and that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction of the subject matter of the suit in which the Judgment described in the Complaint was rendered. Therefore, the Judgment is void and the plaintiff should not recover.

Plea Ten: For purposes of this Plea, defendant adopts all of the averments of Plea Nine down to and including the quoted words "be the most convenient for a hear-

ing" and in lieu of the averments following the said quoted words, says as follows: Defendant says that it issued to A. H. Lawler Construction Company a Workmen's Compensation Policy, No. 68-820, and a true and correct copy of said policy is attached hereto and marked "Exhibit C" and made a part hereof as if fully set out herein at this point. Defendant says that Item 3 of the Insuring Agreement of said policy provides that Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia, and defendant says that its policy did not apply to the Compensation Law of the State of Alabama, and defendant further says that the coverage afforded by its said policy did not apply to the accident described in plaintiff's Complaint.

Plea Eleven: For purposes of this Plea, defendant adopts all of the averments of Plea Ten down to and including the words "Coverage A of the policy applies to the Workmen's Compensation Law of the State of Georgia", and defendant says as follows: The accident described in plaintiff's Complaint happened in the State of Alabama. The contract of employment was made in the State of Alabama, and the residence of the plaintiff Crider was in the State of Alabama. Defendant further says that the contract of employment by and between the plaintiff Crider and his employer, A. H. Lawler Construction Company, was made expressly for service exclusively outside of the State of Georgia. The plaintiff was not entitled to compensation under the laws of the State of Georgia. Hence, the coverage afforded by defendant's said policy of insurance did not apply to the accident described in plaintiff's Complaint, and the plaintiff should not recover.

Plea Twelve: Defendant says that in its policy of insurance sued on, it is provided as follows:

"If claim is made or suit or other proceeding is brought against the insured, the insured shall imme-

diately forward to the company every demand, notice, summons or other process received by him or his representative."

The policy provides further that:

"No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, * * *."

Defendant says that the insured named in the policy, A. H. Lawler Construction Company, did not immediately forward to the Company every demand, notice, summons or other process received by it or its representative. Defendant says that it did not receive any notice of the plaintiff's suit in the Circuit Court of DeKalb County, Alabama. Therefore, defendant says that the plaintiff cannot recover.

Plea Thirteen: For the purposes of this Plea, defendant adopts all of the averments of paragraph one of Plea Four. Defendant says that plaintiff, on February 10, 1959, filed his amended complaint, which was an entirely new and different cause of action from that averred in the original complaint, a copy of which is attached hereto and marked "Exhibit D", and made a part hereof as if fully set out herein at this point, and that the Circuit Court of DeKalb County, Alabama, on February 11, 1959, rendered its Judgment of Court Awarding Compensation upon said Complaint as Last Amended, and defendant further says that the Complaint as Last Amended was never served upon A. H. Lawler Construction Company. Defendant says that the Circuit Court of DeKalb County, Alabama, did not have jurisdiction over the person of A. H. Lawler Construction Company, and the Judgment of that Court described in plaintiff's Complaint is void.

/s/ Spain, Gillon & Young,
Attorneys for Zurich Insurance Company.

**Crider's Demurrer to Pleas of Defendant.**

Comes the plaintiff and demurs to defendant's special pleas three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, and for grounds of demurrer, assigns separately and severally, the following:

1. Said pleas present an immaterial issue.

2. Said pleas confess the averments of the complaint but do not set up a sufficient defense to avoid said averments.

3. For that the averments contained in said pleas are conclusions of the defendant and do not state facts constituting defenses.

4. For that said pleas contain no averments that remove the judgment obtained in the Circuit Court of DeKalb County from the rule as to the conclusiveness of judgments rendered by Courts of competent jurisdiction in all kinds of judicial proceedings.

5. For that said pleas fail to make sufficient averments under the applicable law of this State to remove the judgment rendered by the Circuit Court of DeKalb County from the doctrine of res judicata.

6. For that said pleas fail to sufficiehtly aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment is conclusive as to all facts or issues decided therein and binds not only those who were parties to the litigation but also persons who are in privity with them.

7. For that said pleas fail to sufficiently aver facts to remove the judgment rendered by the Circuit Court of DeKalb County from the rule of law of this State that a final judgment on the merits rendered in a former suit between the same parties or their privies upon the same

cause of action, by a court of competent jurisdiction, is conclusive, not only as to all matters determined, but also is conclusive as to any matter which might or ought to have been litigated.

/s/ J. Terry Huffstutler,
/s/ J. Terry Huffstutler,
Attorney for Plaintiff.

**Crider's Amended Demurrer to Pleas of Defendant.**

Comes the plaintiff and with leave of the Court first had and obtained amends its demurrer heretofore filed to the pleas of the defendant and separately and severally assigns the following separate and several grounds:

8. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a bald conclusion of the pleader.

9. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is an unauthorized conclusion of the pleader.

10. The allegation in plea 3 "that the Circuit Court of DeKalb County, Alabama, had no jurisdiction to render the judgment described in said complaint and the judgment is null and void" is a conclusion of law not authorized by any of the pleadings filed in this instant case.

11. Said plea 3 is insufficient in that it does not undertake to allege, state, or outline the facts on which the conclusion is made that the court had no jurisdiction to render the judgment described in said complaint.

12. Aught appearing to the contrary the trial court rendering said judgment had jurisdiction of said matter under the principles of comity obtaining in this state.

13. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Alabama.

14. It is not stated wherein or how the actions of said trial court rendering said judgment counted on in the complaint violated any of the laws of the State of Georgia.

15. The mere union of substantive rights and procedural matters under the laws of the State of Georgia will not preclude the enforcement of the judgment secured by the plaintiff, it appearing that the foreign procedural provisions are not inseparably connected with substantive rights in order to preserve the integrity of such rights.

16. It affirmatively appearing that the defendant in the instant case was not a party to case No. 590 heretofore rendered by the Circuit Court of DeKalb County, Alabama, the defendant in the instant case cannot proceed in this cause under said plea 3, or plea 4, in that this defendant Zurich Insurance Company, a corporation, was not a party to said case No. 590.

17. Said plea 4, and the allegations therein constitute a collateral attack on the said judgment.

18. For that it affirmatively appears that the allegations in said pleas separately and severally, except plea 1 are not direct attacks on said judgment but are collateral attacks.

19. Each of said pleas, separately and severally, are deficient in that the defendant in case No. 590, in which A. H. Lawler Construction Company, Inc., a corporation, was the defendant and the only defendant is not joined as a party plaintiff or a party defendant in the instant case.

20. It appearing that the defendant in the instant case, No. 48637-X in this court and A. H. Lawler Construction Company, Inc., a corporation, were in privity one with

the other at the time of the accident complained of and at the time of the employment of the plaintiff by the defendant or its authorized servants or agents, said judgment rendered in case 590 cannot be attacked by them separately.

21. Each of said pleas, except the plea of the general issue, seek to stop the enforcement of the judgment sued on and are defective in that all parties to the judgment and all parties who will be directly affected if said judgment be declared void or set aside, are indispensable parties to the suit to set aside the said judgment.

22. Said judgment herein sued on is "res judicata" upon the employer and its privy, Zurich Insurance Company, a corporation, and the defendant in this case, and said judgment is therefore not subject to collateral attack.

23. For that it appears that said judgment herein sued on stands unreversed and is binding res judicata upon the parties thereto and their privies, including the defendant in the case at bar.

24. For that it affirmatively appears that the said judgment sued on cannot be collaterally attacked by the defendant in this case, since the facts pleaded show that the defendant in this instant case was in privity with the defendant in the case wherein the judgment sued on was rendered.

25. For that it appears that the judgment sued on was rendered in a court that had the right to decide as to its own jurisdiction and that its decision in favor of that jurisdiction, has the same effect and conclusiveness as its decision in any other matter and cannot be attacked collaterally.

/s/ J. Terry Huffstutler,
J. Terry Huffstutler,
Attorney for Plaintiff.

**Orders of Court.**

7-14-61: Demurrer to each of defendant's pleas is hereby overruled and this case is set for further pleading on August 16th, 1961, at 10:00 A. M. /s/ Ingram Beasley, Judge.

11-20-61: Plaintiff amends demurrer to defendant's pleas by adding grounds 8 through 25. /s/ Ingram Beasley, Judge.

2-16-62: Demurrer as last amended to defendant's pleas 3 through 13 is hereby overruled and this case is continued to Mar. 9th, 1962 at 11:00 A. M. for further pleading. /s/ Ingram Beasley, Judge.

3-13-63: Dismissed on motion of plaintiff without prejudice and all costs taxed against plaintiff. /s/ Ingram Beasley, Judge.

I, Julian Swift, Clerk of the Circuit Court, Tenth Judicial Circuit of the State of Alabama in and for the County of Jefferson do hereby certify the foregoing to be a true and correct copy of the court orders in this case. Recorded in Minute Book 277, page 211.

Witness my hand and seal this the 2nd day of March, 1964.

/s/ Julian Swift,
(Seal) Clerk, Circuit Court

## APPENDIX B.

### Workmen's Compensation Law of Alabama, Code of Alabama, Tit. 26, Secs. 297, 304.

§ 297. (7571) **Controversy submitted to circuit court; jury trial; appeal, etc.—A. Controversy submitted to circuit court.** In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under articles 1 and 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court, such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court may hear and determine such controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this article provided for. B. **Jury trial.** When wilful misconduct on the part of the employee is set up by the employer, as it is provided for herein, the employer may, upon appearing demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues, by filing his demand within five days after the appearance of the employer. When a jury is demanded by either party, the court must submit the issues of fact as to wilful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual powers of the court over verdicts rendered contrary to

the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense, the employer must serve a copy of the plea or answer, setting up the defense, upon the employee or his attorney of record. C. **Court always open.** For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under articles 1 and 2 of this chapter, the circuit court shall be deemed always in session. D. **Adverse claimants.** If at any time there are adverse claimants to compensation hereunder, the employer in submitting said claim to said circuit court may suggest in writing said claimants and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge, shall be released from the claims of any other claimants thereto. E. **Appeal by certiorari.** From such decree any aggrieved party may by certiorari within thirty days thereafter appeal to the supreme court or the court of appeals of Alabama (1919).

§ 304. (7578) **Procedure in cases of dispute.**—Either party to a controversy arising under articles 1 and 2 of this chapter may file a verified complaint in the circuit court of the county which would have jurisdiction of an action between the same parties arising out of tort, which shall set forth the names and residences of the parties and the circumstances relating to the employment at the time of the injury, with a full description of the injury, its nature and extent, the amount of the average earnings received by the employee which would affect his compensation under articles 1 and 2 of this chapter, the knowledge of the employer of the injury or the notice to him thereof, which must be of the kind provided for in articles 1 and 2 of this chapter, and such other facts as may be necessary to enable the court to determine what, if any com-

pensation the employee or in case of a deceased employee, his dependents, are entitled to under articles 1 and 2 of this chapter. The complaint shall be filed with the clerk of the circuit court who shall cause summons to be issued thereon requiring the defendant to come in and answer said complaint within 30 days of the service thereof. Thereafter said cause shall proceed in accordance with and shall be governed by the same rules and statutes as govern a civil action between the parties, except as otherwise provided in articles 1 and 2 of this chapter, and except that all causes filed hereunder shall be preferred causes and shall be set down and tried as expeditiously as possible. At the hearing or any adjournment thereof, the court shall hear such witnesses as may be presented by each party, and in a summary manner without a jury, unless one is demanded to try the issue of willful misconduct on the part of the employee, decide the controversy. This determination shall be filed in writing with the clerk of said court, and judgment shall be entered thereon in the same manner as in causes tried in the said circuit court, and shall contain a statement of the law and facts and conclusions as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due; but nothing herein contained shall be construed as limiting the jurisdiction of the supreme court or court of appeals to review questions of law by certiorari.

## APPENDIX C.

### Workmen's Compensation Law of Georgia
### Ga. Code Ann., Chapter 114.

**114-103. Other remedies excluded by this law.**—The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this Title, agreeing respectively to accept and pay compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury loss of service or death. (Acts 1920, p. 176.)

**114-305. Time of filing claim.**—The right to compensation under this Title shall be forever barred unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, and, if death results from the accident, unless a claim therefor is filed with the Board within one year thereafter; except that if a claimant proceeds in good faith against a corporation, the charter of which has expired but which is still doing business, he shall have the right to then proceed against the person or persons operating under the corporate name, and the one-year limit shall not apply. (Acts 1920, p. 181; 1925, pp. 282, 284; 1931, pp. 7, 43.)

**114-705. Agreements as to compensation, filing of.**—If, after 14 days from the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Title, a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation shall be filed with the Board for approval as herein provided; otherwise such agreement shall be voidable by the employee or his dependents. If

approved by the Board, thereupon the memorandum shall for all purposes be enforced by decree or judgment of the superior court, as herein specified. (Acts 1920, p. 196; 1931, pp. 7, 43.)

**114-706. Hearings regarding disagreements.**—If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Title, or if they have reached such an agreement which has been signed and filed with the State Board of Workmen's Compensation, and compensation has been paid, or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Board for a hearing in regard to the matters at issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred if the same occurred in this State, unless otherwise agreed between the parties and authorized by the Board. If the injury occurred without the State and is one for which compensation is payable under this Title, then the hearing above referred to may be held in the county of the employer's residence or place of business, or in any other county of the State which will, in the discretion of the Board, be the most convenient for a hearing. If either party in the matter of disagreement scheduled for a hearing desires to take evidence in any county of this State other than the county of the original accident and injury, or the county of the employee's residence, as the case may be, they may do so by making application either to the Board or the hearing member of said issues in dispute, and if in the discretion of the Board or the hearing member it is deemed that the evidence is material and necessary to a fair and just adjudication of said issue

or issues. The Board or hearing member shall have authority to continue said hearings for the purpose of taking said evidence in any other county of this State, and shall either schedule the hearing for the taking of said evidence in any county of the State of Georgia, or shall direct that the evidence be taken by deposition under the rules now required for taking depositions in civil cases of the State; Provided that if the Board or member directs the parties to take evidence by deposition, the party or parties taking said depositions shall forward the same to the secretary and treasury of the State Board of Workmen's Compensation in the same manner as depositions are filed with the clerks of the superior courts in other cases. If either party at issue desires to take the testimony of witnesses without the State the Board or the member may authorize any officer or employee of the authority charged with administering the workmen's compensation laws of the State where such testimony is to be taken to act as commissioner for the taking of the same, or it may direct the taking of such testimony under the same rules now pertaining to the taking of testimony of persons without the State in civil cases. After notice of a hearing has been given by the Board, either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, under the same requirements now provided for the taking of depositions upon oral examinations or written interrogatories in civil cases in the superior court. (Acts 1920, p. 197; 1931, pp. 7, 43; 1945, p. 462; 1956, pp. 725, 726.)

## APPENDIX D.

### Pertinent Portions of the Workmen's Compensation Law of Georgia, Chapter 114, Referred to in Section II of This Brief.

Section 303 provides that no compensation shall be paid unless notice is given to the employer within 30 days after the accident "* * * unless a reasonable excuse is made to the satisfaction of the State Board of Workmen's Compensation for not giving such notice and it is reasonably proved to the satisfaction of the Board that the employer had not been prejudiced thereby." Section 305 bars the right to compensation "* * * unless a claim is filed with the State Board of Workmen's Compensation within one year after the accident, * * *." Section 407 denies compensation to an employee who "refuses employment procured for him suitable to his capacity * * * unless in the opinion of the State Board of Workmen's Compensation such refusal was justified." Section 412 sets out certain things which "* * * must be definitely proved to the satisfaction of the State Board of Workmen's Compensation" in any claim involving a hernia. Section 414 refers to dependents and provides that "* * * the State Board of Workmen's Compensation, however, to have the power in proper cases, in their discretion, to apportion the compensation." Section 415 provides that payments made which were not then due and payable "* * * may, subject to the approval of the State Board of Workmen's Compensation, be deducted from the amount to be paid as compensation." Section 416 provides: "The State Board of Workmen's Compensation, upon application of either party, may, in their discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly." Section 417 authorizes the State

Board when it "* * * deem(s) it to be to the best interest of the employee or his dependents, or where it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this law." (An Alabama court has no authority to award a lump sum award in the absence of agreement of all parties.) Section 418 authorizes the Board when it deems it expedient to award the lump sum to a suitable person as trustee. Section 420 permits an employer having doubt as to rights of parties to "* * * apply to the State Board of Workmen's Compensation to decide between them." Section 421 authorizes the Board to appoint a guardian of a minor claimant. Section 501 gives discretion to the Board with regard to the selection of treatment and physicians for claimants. Section 503 authorizes the Board to designate a physician and order a claimant to appear for an examination. Upon refusal the Board may stop compensation payments.

Section 703 authorizes the Board to "* * * make rules, not inconsistent with this Title, for carrying out the provisions of this Title." Section 704 requires the Board to "prepare and cause to be printed, and upon request furnish free of charge to any employee or employer, such blank forms and literature as they shall deem requisite to facilitate or promote the efficient administration of this Title." Section 705 requires parties who have reached an agreement to file "* * * a memorandum of the agreement in the form prescribed by the State Board of Workmen's Compensation * * * with the Board for approval as herein provided." Section 706 provides that in case of a disagreement "* * * either party may make application to the Board for a hearing in regard to the matters at

issue, and for a ruling thereon. Immediately after such application has been received, the Board shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing." Section 707 provides for conduct of the hearings: "The members or any of them shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings, and a copy of the award shall immediately be sent to the parties at dispute." Section 709 provides for a review of an award "* * * the State Board of Workmen's Compensation may, within two years from the date that the Board is notified of the final payment of claim, review any award or any settlement made between the parties and filed with the Board and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded or agreed upon, subject to the maximum or minimum provided in this Title, and shall immediately send to the parties a copy of the award." Section 713 permits the Board to appoint a disinterested physician and to fix the fee of the physician. Section 714 provides "Fees of attorneys and physicians and charges of hospitals for service under this Title shall be subject to the approval of the State Board of Workmen's Compensation * * *." (The Alabama Act provides for an attorney's fee of no more than 15 per cent of the award.) Section 715 provides: "All questions arising under this Title, if not settled by agreements of the parties interested therein, with the approval of the State Board of Workmen's Compensation, shall be determined by the members, except as otherwise herein provided."